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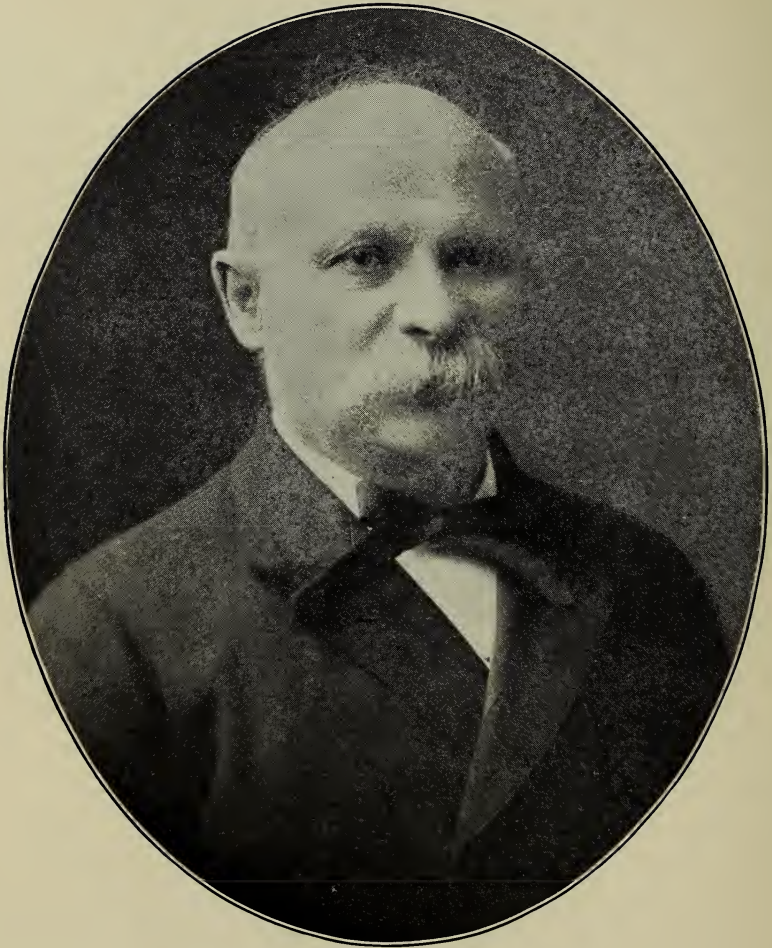
PUBLICATIONS OF THE NEBRASKA
STATE HISTORICAL SOCIETY

PUBLICATIONS
OF THE
NEBRASKA STATE HISTORICAL SOCIETY

VOLUME XIX



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EDWARD ROSEWATER
Founder of the Omaha Bee

PUBLICATIONS
OF THE
Nebraska State Historical Society
VOLUME XIX



Edited by
ALBERT WATKINS
Historian of the Society

PUBLISHED BY THE SOCIETY
Lincoln, 1919

PREFACE

Volume XIX contains some of the most important historical material published by the Nebraska Society. The articles upon Indians and Indian wars, upon European elements in our Nebraska population, the reminiscences of early Nebraskans, and not least among them, the descriptions of early Nebraska found in the testimony of the famous election contest of 1859, give views of social conditions and the status of early settlements not found elsewhere.

In the footnotes will be found a remarkable collection of critical information acquired by extensive research and correspondence and which required very careful scrutiny and comparison.

On April 25, 1917, the Society's board of directors authorized the publication of a historical magazine, and accordingly the first number of "Nebraska History and Record of Pioneer Days" was issued in February, 1918. The contents of the magazine are designedly of a more popular nature than the papers contained in the books, and are largely notes of current historical incidents not appropriate for the more expensive and less frequently issued bound books. It is a means also of making known to the public the work and aims of the Historical Society from time to time. Publication of bound volumes of the Society will be continued for the more important historical papers.

This volume contains many apt illustrations, which were afforded by the very extensive collection of photographs of that class now owned by or accessible to the Historical Society. This pictorial history will continue to be an important feature of the Society's historical publications.

The painstaking research and careful proof reading of the editor of this volume and of others preceding it continues.

ADDISON E. SHELDON, *Superintendent.*

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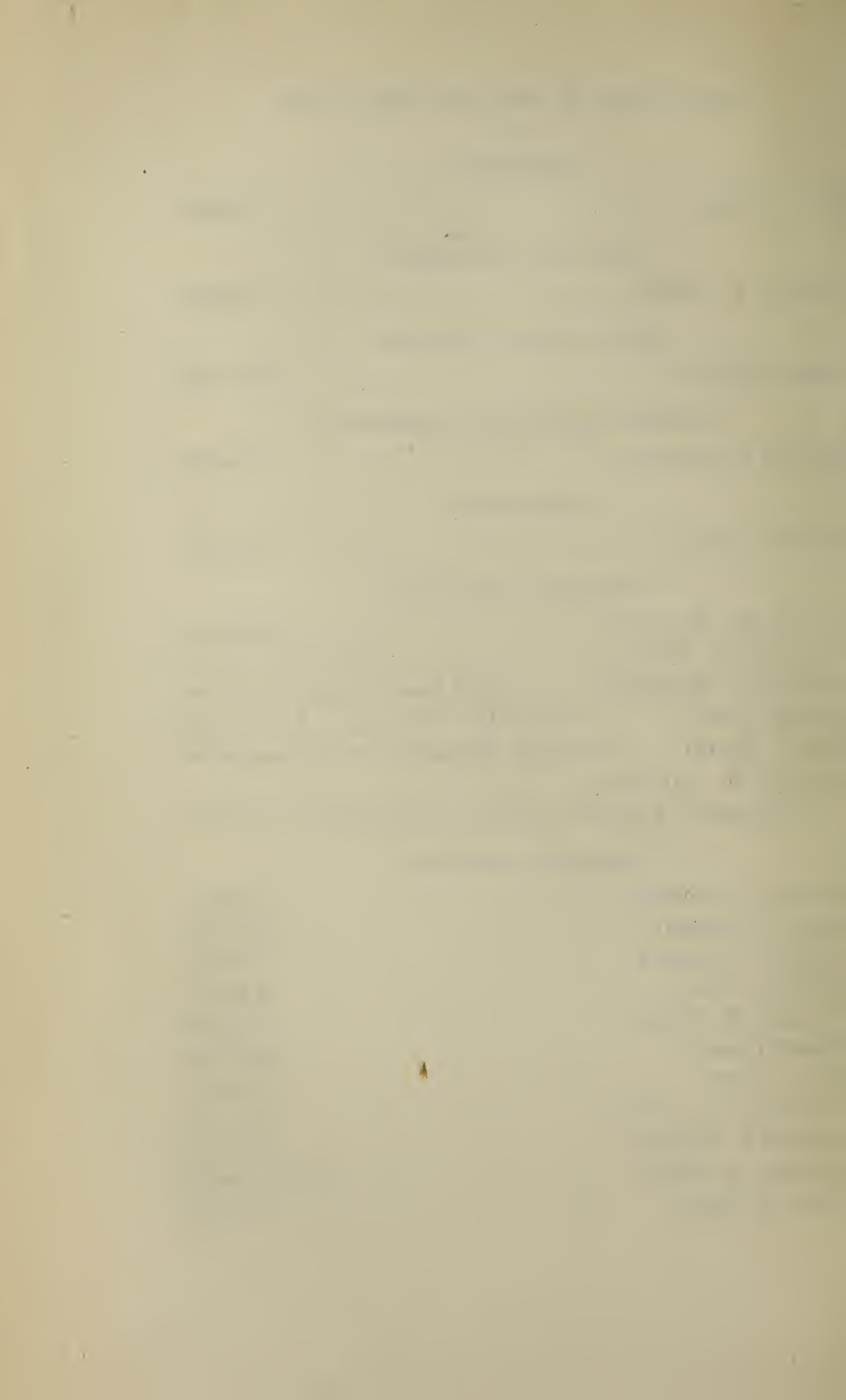
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INCIDENTS OF THE INDIAN OUTBREAK OF 1864

FREIGHTING ON THE PLAINS—PLUM CREEK MASSACRE

BY JAMES GREEN

In the spring of 1860 I went with my parents to Pike's Peak where I resided until January, 1862, when my brother—S. S. Green, now of Schuyler, Nebraska—and I, each with an ox team, started to Omaha after freight. From January to November, 1862, we made three round trips, traveling 3,600 miles in eleven months by "oxomobile."

In the spring of 1863 my brother went to Montana. At this time I exchanged my cattle for a mule team and made one trip with it in the early summer. While in Omaha I became entangled in the famous trial of Judge Tator for the murder of his friend, Isaac H. Neff, and I think I was the most important witness in the case. The accused was convicted and executed sometime in the fall of 1863. It was, I believe, the first legal execution in the territory.¹

Being well pleased with the country around Shinn's ferry, about seven miles west of the present city of Schuyler, I came back from Denver and squatted on a piece of land where the present station of Edholm now stands.²

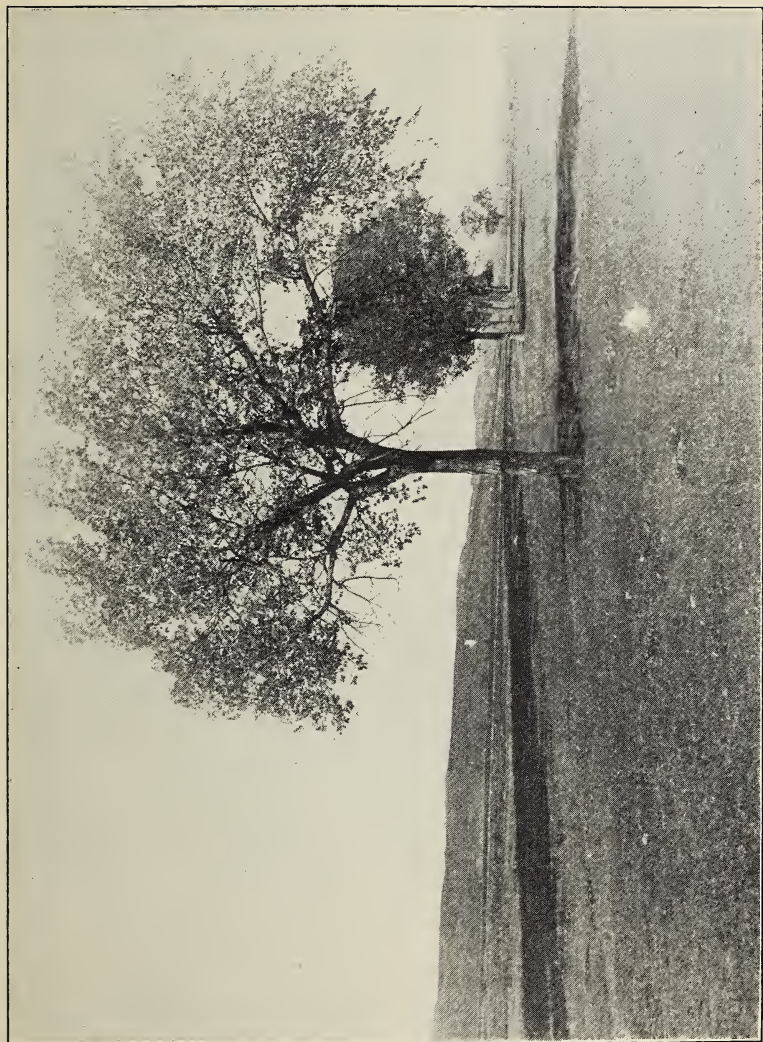
¹ Charles H. Brown, prosecuting attorney for Douglas county, assisted by George B. Lake, conducted the famous case against Cyrus H. Tator, and he was defended by Andrew J. Poppleton and William A. Little, both brilliant lawyers. Further accounts of this famous trial may be found in Sorenson's history of Omaha, page 125; Johnson's history of Nebraska, page 290; history of Omaha by Savage and Bell, page 136.
—ED.

² Shinn's Ferry was situated about one mile west and two miles

On May 30, 1864, I was married to Miss Elizabeth Garrett, who lived with her parents in Saunders county, twenty miles east of my claim. Not long after this, some time in July, I got a hankering for the old Rockys again, so we loaded our traps in the wagon and started across the plains, expecting to make our future home somewhere along the foot of the mountains. At the time we started there was a faint rumor that the Indians were going to cause trouble, and on arriving at Fort Kearny, 125 miles west, the officers there were advising the emigrants to travel in large companies for self-protection; but, being perfectly familiar with the country and also with the Indians along the route, we proceeded as far as Cottonwood Springs, afterward Fort McPherson. On our arrival at this point the air was full of rumors of depredations farther west, and it was said that one man had been killed and his stock run off. After due consideration we concluded the best thing to do was to go back and wait a year, when perhaps the Indian troubles would be settled.

So, early in the morning of August 6, we turned our oxen to the east and drove twelve miles to Gilman's Ranch and went into camp on the bank of the river, half a mile beyond. The river here was full of little towheads and small channels, a few inches deep, trickling over the sand. When we had been in camp perhaps an hour and a half and I was sitting on the wagon tongue thinking of hooking up, suddenly and silently nine of the biggest, blackest war painted Indians I ever saw suddenly appeared out of the river, all riding good horses. They at once began to parley, some of them talking pretty good English, for a trade of ponies for my "squaw." While my wife sat on the wagon in plain sight of them, they raised their bids from one to four ponies for her. All at once the whole party struck out for the bluffs on the full run, which for the moment

south of the subsequent site of Schuyler and about a mile and a half north of the site now occupied by Edholm, Butler county.—Ed.



PARADE GROUND, FORT MCPHERSON

The fort and flagstaff were at right of row of trees. Photographed by A. E. Sheldon, July 1916

was a puzzle for me. But the mystery was soon solved. Looking down the road I saw, within a mile, a troop of cavalry on the march from Fort Kearny to Cottonwood Springs. The purpose of the detachment was to establish an outpost near where the trouble was expected. I don't think we would have been disturbed by these Indians at that time only in a badgering way; and my reason for this belief will be given farther on.

From this camp we drove on a day and a half and then camped at what was called the Deserted Ranch, which was situated on a dry gulch where some one had started a ranch and gave it up before completion. Soon after our encampment a mule train, consisting of ten four-mule teams, came from the east and went into camp on the north side of the road about one hundred yards from us. This was August 7, 1864. This train, of which I shall speak again, further on, belonged to Frank Morton, of Sidney, Iowa. Early in the next morning we broke camp and made what was called a "breakfast drive", a very common thing in those days. We drove to the twenty-one-mile point and went into camp, about ten o'clock, for our breakfast. We had been there but a short time when the east-bound stagecoach passed us at double-quick, and the driver shouted that we had better get out of that as there were ten or twelve dead men lying in the road a little way above. I could hardly believe that there was anything unusual, so I drove four miles to the seventeen-mile point—seventeen miles from Kearny. While there in camp, about ten o'clock, a troop of cavalry came up from the fort on double-quick. The captain halted and asked where I camped last night, and when I told him at the old soddy he asked if I saw any Indians. I told him I did not. "Well," he said, "it's damn strange, for just where you say you camped last night it was reported that ten or twelve people were killed and one woman taken prisoner and their mules run off and wagons burned."³

³ The site of this famous tragedy was half a mile east of Plum Creek station, which was situated on the California road, about a mile

And now, my friends, comes that part of my story, that if there is such a thing as providence interfering or assisting any one it certainly showed its full hand in our case from the time we turned around at Cottonwood Springs until we passed on and escaped the Plum Creek massacre. For it is a fact that the people killed in that raid were the same that we camped so near the night before; and the fact that we made an early drive that morning was the only reason that we escaped. Again, when I tell you that Mrs. Morton, who accompanied her husband on this trip, was an old schoolmate and chum of my wife, and the further fact that they failed to recognize each other in our respective camps, must be another act credited to providence. The people slain consisted of Frank Morton, owner of the outfit, ten men, drivers, and a colored cook. Mrs. Morton was taken prisoner and I believe remained with these In-

west of the mouth of the creek, and thirty-five miles west of Fort Kearny. The place is now in the northwest corner of Phelps county. See Nebraska State Historical Society, *Collections*, XVII, 256 note; Watkins, *History of Nebraska*, II, 177; *Executive Documents*, 1864-5, V, 398. Perhaps Mr. Green correctly accounts for twelve killed, but eleven is the number commonly agreed to. Lieutenant Thomas Flanagan, Sixteenth Kansas Cavalry, reports that on September 1, 1864, he counted eleven graves of victims at the place of the massacre. *Official Records*, first series, XLI, pt. I, p. 244.

On the other hand, *The Omaha Nebraskian* of August 17, 1864, contains a letter from Lieutenant Charles F. Porter, dated Fort Kearny, August 9, in which he says that in the morning of that day Colonel Summers and Lieutenant Comstock, of the Seventh Iowa Cavalry, made a thorough search of the locality where the train was captured and found the bodies of thirteen men killed—several scalped and horribly mutilated, nearly all stripped of clothing. Five men were supposed to be still missing, also three women and several children it was thought had been carried away prisoners, one of them a Mrs. Baker of Council Bluffs, Iowa. At eleven o'clock the same morning sixteen Indians attacked Fred Smith's ranch, nine miles below Plum Creek, killed the hired man, burned the store, and drove off all the stock but five head. Smith and his wife had left for Kearny City two hours before the attack.

Lieutenant Bowen, Seventh Iowa Cavalry, "and others" were at the Thomas ranch, three-quarters of a mile west of the place of the Plum Creek massacre. They saw a hundred Indians attack the train,

dians for about five months when she was rescued through some friendly Indians, carried to Denver and was finally restored to her friends.

Another remarkable escape occurred at this time. About four miles east of our camp was a new ranch owned by a German called "Dutch Smith." As we passed the Smith place on our drive that morning he was seated in a buggy at the door, and his wife was pleading with him to go along, to Kearny; but he seemed to be quite anxious for her to remain home. However, she prevailed, for within half a mile they passed us on the road to Kearny, and the Indians that committed the murders at the Morton camp followed down the road as far as Smith's place, killed his hired man, ran off his stock and burned his

completely encircling it. Very little resistance was made by the men of the train. Apparently revolvers were the only weapons they had. Lieutenant Bowen could not find a soul left to tell the story. All the wagons but three were burned. The train was well loaded with dry goods, clothing, and household goods, apparently the outfit of some well-to-do settlers going west.

Under date of August 15, Fort Kearny, Lieutenant Porter writes that James and Baker of Council Bluffs were not killed at Plum Creek. The names of those certainly killed were Charles Iliff, Mable and boy, Smith and his partner, all of Council Bluffs, William Fletcher, of Colorado, and five others not known. "Six wagons loaded with corn and machinery from St. Joe belonging to Michael Kelly, and the outfit belonging to E. F. Morton, from Sidney, were destroyed." General Mitchell had brought this information from Cottonwood.

A correspondent in the *Nebraska Republican* of August 19, 1864, said that there were about twelve wagons in the Plum Creek train, that one hundred Indians attacked it and that thirteen men were shot and mutilated. The *Republican* savagely assailed Colonel Summers on the basis of a report that the operator at Plum Creek, in full view of the massacre, telegraphed Fort Kearny about it at seven o'clock in the morning, soon after its occurrence. Summers did not start until eleven o'clock and was on the road until ten o'clock at night—eleven hours for a march of thirty-two miles. He stopped two hours for dinner on the way. His command was cavalry with fresh horses.

On August 7, 1864, there were concerted attacks by Indians on settlers, travelers, and stations along the California road between the Little Blue River and the mountains.—Ed.

buildings. Whether these different escapes all just happened or whether the hand of providence was guiding us are things that to me are not comprehensible.

In referring back to the episode at Gilman's Ranch with the nine Indians, I have come to the conclusion that they would not have harmed us at that time; for I consider it a premeditated attack. There were depredations committed all along the line for a distance of two hundred miles, and thus this little squad would not have dared to start the scrap before the time arrived.

On our arrival at the old home and starting point we concluded that Nebraska was good enough for us, and we have rounded out a full half century within her confines. We have two sons, thirteen grandchildren and five great-grandchildren, all born in Nebraska and all living in the state to-day, without a death in the family for forty-six years.

It is marvelous to stop for a moment to consider what has taken place in this great America of ours in half a century. Every mile of railroad west of Minneapolis, Fort Des Moines and St. Joseph has been constructed since I settled in the territory. Fort Des Moines, Iowa, was the nearest to a railroad at the time of my settling in Butler county.

THE MASSACRE AT OAK GROVE RANCH

FROM MEMORANDA OF CAPTAIN EDWARD B. MURPHY⁴

Reports came to Fort Kearny that every ranch and stage station between Fort Kearny and Big Sandy Creek was burned. The commandant was ordered by his superior officer to investigate this report. He ordered me to go east on the Overland stage road to Big Sandy Creek,

⁴Edward B. Murphy was captain of Company A, Seventh Iowa Cavalry. Companies A, B, C, D, E, F, G, and H of this regiment were detached to Nebraska on account of Indian hostilities, and they arrived at Omaha on September 19, 1863. The other four companies of the regiment had been sent northward and camped at Sioux City, Iowa. Ware, *The Indian War of 1864*, p. 8; *Official Records*, first series,

if necessary, find out what there was in the report, and fight the Indians if compelled to do so. I was to take ten days' rations, one hundred rounds of ammunition for the carbines and the same for the pistols. We were also to take two pieces of artillery, the chests of each to be filled with spherical case grape and canister. We had but one

XLI, pt. II, p. 30. On July 30, 1864, Company A was at Dakota City, C and F at Fort Cottonwood, B and D at Fort Kearny, E at the Pawnee agency, Nebraska, G at Topeka, and H at Fort Riley. Company I was at Sioux City and K, L, and M in Dakota with General Sully's "north-western Indian expedition." Companies A and D First Battalion Nebraska Cavalry were at Omaha; Company B at Dakota City; Company C, under Captain Henry Kuhl, on the march to the Pawnee agency. *Ibid.*, XXXIV, pt. IV, pp. 620, 621, 628.

On July 19 General Robert B. Mitchell, in command of the military district of Nebraska, and then at Fort Cottonwood, was urging General Samuel R. Curtis, commander of the department of Kansas, which included Kansas, Nebraska, Colorado, and Indian Territory, to send reënforcements. On that day the acting assistant adjutant general at Omaha issued the following order:

Captain E. B. Murphy, Company A, Seventh Iowa Cavalry, is relieved from command at Dakota City, Nebr. Ter., and will march his company to Fort Kearny, Nebr. Ter., via Omaha, without a moment's delay.

On the 25th the same officer telegraphed to Colonel Samuel W. Summers, of the Seventh Iowa Cavalry, in command at Fort Kearny, that Company A left Omaha for the fort on the 24th. *Ibid.*, XLI, pt. II, pp. 276, 277, 347, 399. On May 3, 1864, General Mitchell ordered Captain Murphy to establish the headquarters of his company at "Dakota Post", Nebraska. *Ibid.*, XXXIV, pt. III, p. 425.

On August 12 Colonel Summers sent word to Captain John Willans, assistant adjutant general at Fort Leavenworth, department headquarters, that all the mounted men at the fort—only fifty in number because a part of the command were at Plum Creek—"started for the Blue this morning." *Ibid.*, XLI, pt. II, p. 673.

In a dispatch to General Curtis, dated at Fort Kearny, August 18, 1864, General Mitchell described the battle of August 15, on Elk Creek, between Captain Murphy's command and the Indians as follows:

Captain Murphy has just returned from the Blue. Undertook to go from the Blue to the Republican. Got as far as Elk Creek. Met 500 well-armed Indians; had a fight; killed 10 Indians and lost 2 soldiers. Was compelled to fall back after driving Indians ten miles. Indians followed him thirty miles on his retreat. Things look blue all around this morning. *Ibid.*, p. 765.

Captain Murphy enlisted from Ottumwa, Iowa, September 12, 1862; mustered in April 27, 1863; promoted to captaincy July 8, 1863; after-

wagon with us. I got ready, and told the colonel that I would return by way of the Republican River. He said "Do not do that."

I started immediately after dinner, and had one hundred and twenty-five men when I left the fort. About eight miles east of the fort I met Lieutenant Giger,⁵ selected twenty of his best men, and took them along with me. When the lieutenant arrived at the fort he reported to the colonel that I had taken twenty of his best men. This was more than the officer wanted to spare, as he feared an attack on the fort. He sent a courier after me. The citizens who were camped on the reservation were anxious to know what devilment had been done east of the fort by the Indians, and no one was more interested than Benjamin Holladay, owner of the stage line, who was on the ground. So they raised a purse of twenty-five dollars to bribe this courier, and sent a man after him mounted on a swift horse. He was to give the courier the twenty-five dollars,

ward transferred to Company A of the reorganized Seventh Cavalry; resigned December 23, 1865. He was in very active service on the Nebraska plains during the campaigns of 1864 and 1865; was at Plum Creek, August 31, 1864; on the Republican River, just below Medicine Lake Creek, September 13; early in October he established and took command of Alkali post, thirty-five miles west of O'Fallon's Bluff, and was there, chasing Indians, in the spring of 1865. *Roster and Record of Iowa Soldiers in the War of the Rebellion*, IV, 1263, 1336, 1397, 1456. *Official Records*, first series, XLI, pt. I, pp. 245, 826, 830; *ibid.*, pt. II, pp. 734, 765; *ibid.*, XLVIII, pt. I, pp. 90, 91, 399, 1040; pt. II, pp. 274, 1251.

After retiring from the military service Captain Murphy settled at Plattsmouth. In 1871 he joined a company which founded the town of Arapahoe, Furnas county, of which he became a resident and where he died in the year 1900. Nebraska State Historical Society, *Proceedings and Collections*, second series, V, 302; Andreas, *History of Nebraska*, p. 888.—Ed.

⁵ Benjamin F. Giger enlisted in the Fourth Iowa Cavalry, October 14, 1861; discharged July 22, 1862, at St. Helena, Arkansas; enlisted in Company E, Seventh Iowa Cavalry, as third sergeant, November 14, 1862; regimental commissary July 23, 1863; transferred to field and staff of the reorganized regiment; mustered out May 17, 1866. *Roster and Record of Iowa Soldiers in the War of the Rebellion*, IV, 722, 1262, 1303, 1396.

and he was not to deliver any order to me, but to come back and tell the colonel that the Indians drove him back, and that he could go no further. This worked all right for the citizens, and the courier did not follow me; so I went on my way, making fifteen miles that afternoon, and twenty-five miles the next day.

The Indian spies were watching us. We put out strong guards at night, slept on our arms, started before breakfast and arrived at the dining station of the stage company, where we took breakfast. The stage people and the passengers had sat down to breakfast. The stage was waiting at the door. Mounted men came from the nearest ranch and told the passengers to fly for their lives—that the Indians had killed three men five miles south of this eating station. They left the table without touching their coffee. The ham was cooked and on the table and the bread on the plate. The ladies of the ranch put a few things into the stage, the driver put on his whip, and they struck out for the fort.

That was the condition in which I found that eating station. The Indians did not molest the passengers on their way to the fort. We fed our horses, had breakfast, and started about ten o'clock.

We soon came to a place where eight wagons had been camped. They had formed no corral, and as they were hitching up in the morning the Indians came upon them. One team started out one way and the others in opposite directions. The savages killed the eight men, owners of the wagons, and took their stock, arms and ammunition. Their wagons were standing there on the prairie, their bodies lying in the hot sun with no one to bury them. They had been scalped and had then been dead five or six days. We gave them as decent a burial as was possible, and started for Pawnee Ranch to stay over night.

We arrived at Pawnee Ranch quite late, and found that ranch all pierced with bullets.⁶ Several wagon loads of

⁶ Pawnee Ranch was built by Jefferson B. Weston in 1857, at the

goods were scattered around on the ground. The ranch looked as if it had been besieged. We put out a strong guard for the night and divided the command, half of them sleeping at the house and half at the stable. Indians were watching us all night and firing at our guards, who returned the fire. We had everything arranged in case of a night attack. There was a war party sent out from the main body to harass us. Several parties of this kind were kept out all the time, and relieved by others when they were worn out. That is their custom in spying and guarding, and posting the main body as to the whereabouts of the enemy. We found some hay near this ranch and hauled in two loads of it, and stayed at the ranch another day and night.

About three o'clock in the afternoon I saw a party of men coming up the road. I climbed upon the stable, and discovered that they were white men. They halted, as they were uncertain as to who we were. I sent out a mounted man with a guidon. (A guidon is a V-shaped flag on a long staff.) When they discovered it was "Old Glory", they were wild, and came on a run for the ranch. They were a company of militia from Beatrice, Nebraska. One of them, the captain, was sheriff of Gage county, Nebraska, and the lieutenant was the deputy sheriff. I welcomed them, and made inquiries about the Indians. They told me about a big train of wagons that were all stripped of their covers. The wagon master of this train was along with the company. He was a very wild man, owing to the loss of his cattle and mules, and would like something to hap-

mouth of Pawnee Creek, now in the southwest quarter of section 16, township 5, range 8, west, in the southwestern corner of Clay county. It was on the principal highway from the Missouri River to California, Oregon, Utah and Colorado, the line of the original Oregon Trail, 54 miles southeast of Fort Kearny and 26 miles west of Little Blue station. Johnson, *History of Nebraska*, p. 265; John Gilbert, *seq.*, p. 22; *Official Records*, first series, XLI, pt. I, p. 825. The ranch was unsuccessfully attacked by Indians late in the afternoon of August 9. Wells, *A Frontier Life*, pp. 81-89.—Ed.

pen to the Indians. His name was George Constable. I asked him how many wagons there were, and he said about two hundred. I asked him what kind of stock was used in propelling his train, and he said cattle and mules, principally cattle. He told me that the big Indian camp was about eight miles south of the Little Blue, that the Indians had plenty of other cattle, and were having a big feast in eating them. I asked him if he would like to go along, and he said he would. I then told him I would try and recover his cattle for him, but as to his mules I could not say, as they were in all probability fettered out or closely corralled in the Indian camp. He said most of this train was owned by men in St. Joseph, Missouri, but he had ten wagons of his own in the train. He informed me that even if he could recover the stock, the loss to the owners in goods, freight and money would be great.

That company of militia numbered about thirty men. They told me that they had left their families in Gage county, Nebraska, without protection, and were willing to help to drive the Indians out of the country. I did not wish to take them into a battle that I knew would be twenty to one, but if they would volunteer their services to help me in the fight the next day it might be the means of stopping those savages from going any further east and saving a great many lives. They knew that the Indians were defiant and thought they could do as they pleased, go when and where they wanted to, and these men were willing to risk their lives to teach them a lesson if it could be done. That was the kind of material of which the early settlers of Nebraska were made. Brave fellows they were, and to a man they voted to go that afternoon. I had them clean up their arms and look over their ammunition and other equipments, so as to be in shape on the third day to go for the red devils.

That evening they discovered a lot of pistols of thirty-six caliber, with waterproof ammunition for them. They divided them up among themselves and my men, so that

many of the men in the fight had three revolvers at their belts the first days of battle. This made me feel better, and also those militia men, as the barrels of those pistols were long and six-cornered, and were better than many rifles that were used in the army for short range work.

We put everything in readiness that night for a march of thirty miles on the morrow. We had a strong guard that night, as we could see large bands of Indians on the hill south of the Pawnee Ranch. I requested the militia to start ahead of us, but to keep within a reasonable distance, as they were not strong; and for them to send two men ahead of them—two on each flank where the country was broken. This they did, and we followed them, but were delayed in burying three bodies which we found in a patch of weeds near a burned ranch, scalped and badly decomposed. The buzzards sighted those bodies to us, as they were flying in the air in large numbers in the vicinity of the bodies. We also found where one of Ben Holladay's passenger coaches had been burned, and also his eating station was in ruin. We found four other ranches that had been burned.

We watched the Indians all day. They kept up their smoke so as to show our location, telegraphing in this way to the main body, so that the head warriors would understand the situation. Well indeed did these young warriors carry out their instructions, like trained soldiers. Sometimes they would fire rockets of different colors into the air. Those signals, I suppose, gave the headmen our strength.

We finally arrived in the early afternoon at the Little Blue Ranch,⁷ where the big train had been corralled, and O, such a sight! Such destruction of property! Boxes, barrels, sacks, boots, shoes and clothing scattered on the ground. There were at least two hundred packages of different kinds of liquors, put up in cases, bottles, kegs and

⁷ Little Blue station was situated four miles northwest of the site now occupied by the town of Oak, Nuckolls county.—ED.

barrels. The militia boys were dry when they got there, and some took a little too much. I told Mr. Constable, the wagon master of the train, that I had better put a guard over the liquor, for the men might get to sampling it too freely. That would not [do for] the critical condition in which we were placed at that time, with our savage enemy within a mile of us, as if they were guarding us. "Captain," said he, "just spill it on the ground." The heads of the barrels and kegs were all broken in by the Indians and a great deal of the liquor had been taken away. I told him I would not do that, for it might compromise the government. There might be a claim and a demand made for the value of the liquor. "Well," said he, "I will have to spill it myself." He gave the hospital steward ten gallons of sour wine, as in case of wounds or sickness it might be needed. The large quantity of liquor remaining was all spilled and made a terrible stench.

We moved the wagons close together and put the goods back into them. We did not have stable room for all the horses and had to tie some of them to the wagons, inside of the corral. We got everything in readiness for the night and were well prepared for anything that might happen. I was told that at the next ranch east of where we were camped there were three women taken captives, and the husbands of two of those women were killed, also two other men and two children, making six persons in all that were killed at the ranch, and three taken into captivity. The women's names were Mrs. Eubanks, the lady of the ranch; Mrs. Julian, who was travelling with her husband, who was killed; Miss Roper, whose father was with the militia. He was nearly crazy about her captivity.

I sent Captain Henry Kuhl^s of the Black Horse Cav-

^s Henry Kuhl enlisted from Plattsmouth, captain of Company C, First Battalion Nebraska Veteran Cavalry, which was organized on the disbandment of the Second Nebraska Cavalry, from January to August, 1864; commissioned June 7, 1864; transferred to Company F, First Regiment Nebraska Veteran Cavalry, on the consolidation of his bat-

alry, as they called themselves at that time, although not mounted—they were afterwards consolidated with the First Nebraska Cavalry—to go and bury all the dead that he found in the vicinity of the Eubanks ranch. I gave him a strong guard of fifty men, as the Indians were all around there, but told him not to bring on any fight with them, only so far to carry out his instruction to bury the dead, and if he could not do that to come back and report the facts to me.

He went to the ranch, found the Indians there in force, drove them across the Little Blue River, and found the bodies of four men and two children belonging to the Eubanks family. One of the four men was the father of the children, and the mother was taken into captivity. These bodies were a terrible sight to behold. They were all scalped, their bodies naked, and their bowels cut open. They had been dead for several days and were badly decomposed. The captain buried them as well as he could, and got back at dark.⁹

talion with the regiment, July 10, 1865; discharged October 11, 1865. He won high praise for conduct in the Indian campaigns. *Official Records*, first series, XLVIII, pt. I, p. 90. He was in temporary command at Fort Kearny on August 8, 1864, the next day after the concerted attack by Indians. *Ibid.*, XLI, pt. II, p. 615.—Ed.

⁹ This is erroneous. From the best information obtained it appears that the victims of the raid on August 7 at and near Oak Grove Ranch and Kiowa station were the elder Eubanks; his oldest son, William; a daughter about seventeen years old; a boy about twelve, who was with his father; and the youngest boy, who was at the house with William. William Eubanks and his little boy were killed at the Eubanks home, about forty rods southeast of The Narrows; W. R. Kelley and M. C. Butler at Oak Grove Ranch, a mile and a half southeast of the site now occupied by the town of Oak; the elder Eubanks and his boy, about twelve, three-quarters of a mile southeast of Oak; Joe Eubanks and his brother Fred, also brothers of William, near Kiowa station; a boy, Ulich, about a mile and a half northwest of Kiowa station; and William Bowie, a settler, about two miles below Oak Grove Ranch. Another man, called Nelson Oberstrander, died three weeks afterward of wounds received at Oak Grove Ranch. George A. Hunt, who became a prominent citizen of Nebraska and now resides at Crete, was wounded

When supper was over and the horses cared for, I had a strong guard put out around the camp. Captain Kuhl watched in the forepart of the night and myself in the latter part. The Indians kept firing upon the guards all night. The guards returned the fire, and such a night as we passed! The men slept on their arms. The Indians were posted behind trees and mounds, and were strong. We counted about four hundred of them in the morning, as they went south to the main body, who were having a big feast at the time, with all the beef they wanted to eat, groceries and liquor taken from the train, flour and other supplies that were taken from the ranches. They certainly had a fine location for a camp, and enjoyed life as only Indians with a full stomach could. They did not care to move away from that camp, with all those big herds of cattle in sight, with wagons and ranches full of groceries. What better layout could be found? And no one as yet to contest their right to them! They were happy. How, "Culah big Indian Me," how was it at this time with those poor, unfortunate captive ladies in that camp? Husbands and children killed, their homes destroyed, with no hope in sight for their release from captivity.

One of those women could understand a little of the Indian language. Although there were a great many different tribes represented in this big camp, and the language of each tribe was different, yet she understood them to say that there were soldiers in camp on the Little Blue and that the Indians were going to fight and kill the last one of them. She called the other women and told them what she had understood them to say. This news gave

in the thigh with a rifle ball. John Gilbert's statement (*infra*, p. 27) that Captain Kuhl did not bury any of these victims is probably correct. Mrs. William Eubanks, her little daughter Isabella, and Laura Roper, aged fifteen, were carried away captives. For accounts of their ransom and rescue see Nebraska State Historical Society, *Collections*, XVII, 159 note; Grinnell, *The Fighting Cheyennes*, 181 note; *Official Records*, first series, XLI, pt. III, p. 243; *ibid.*, XLVIII, pt. I, pp. 276, 322.—ED.

them new heart, with some hope that they would be recaptured in the near future. Their hearts became brave, and they bore up under the horrible insults heaped upon them by the old withered, jealous Indian squaws and their murderous, lustful bucks, with a silent prayer to heaven, fervently asking their Maker to change their captivity to freedom. I gleaned the above from their conversation with me after their release, which I was the means of bringing about, through the divine permission of the almighty God, who had ordained it so that I should be the means through which those poor creatures should be released from their captivity.¹⁰

THE BATTLE OF THE LITTLE BLUE

BEATRICE, Aug. 17th 1864.

MR. J. B. WESTON¹¹

SIR

We the undersigned members of a company, that went out in pursuit of Indians on the Little Blue make the following statement:

Our Company consisted of thirty-four men. We left Big Sandy on the 12th August. Arrived at Pawnee Ranch on the 14th Found all the principal places between the Hackney Ranch¹² and Pawnee burned except Little Blue station. Found a company of Soldiers at Pawnee Capt. Murphey in command. Aug. 14th Captain Murphey's company with own company marched to little Blue station. The Capt. detailed a squad of men to bury the dead at the Narrows.¹³ Five in number. There is an abandoned train

¹⁰ Though there is no intimation in any of the accounts that Captain Murphy took any part in the ransom and release of Mrs. Eubanks and Miss Roper, his own statement is worthy of credence.—Ed.

¹¹ Jefferson B. Weston, one of the founders of Beatrice and who afterward became a very prominent citizen of the state.—Ed.

¹² Hackney's ranch was five miles east of Kiowa station, just west of the present boundary line between Thayer and Nuckolls counties.—Ed.

¹³ The Narrows is a mile and a half northwest of Oak. The place was so-called because a projection of the bluff on the east side of the Little Blue was so close to the river as to leave a very narrow space for the road.—Ed.

of about a hundred wagons at Little Blue station Bound west.¹⁴ Several have been burnt.

Aug. 15th The whole command started South for the Republican. We came upon the Indians near where the Fort Riley Road crosses Elk creek 10 miles from Little Blue station. The Captain ordered an attack, and we drove them from Six to Eight miles. The Number engaged on their side was from 250 to 300, and there appeared to be a still larger number some distance back. they were moveing towards the Republican. There was one Howitzer in the command that was disabled after the first round. The command was halted & a retreat ordered. The Retreat was made in good order. The Enemy followed back to the crossing of Elk Creek Our loss was Two. That of the enemy is estimated to be larger. We fell back to Little Blue Station

Captain Murphey having only Three days leave from Kearney & Rations for the same length of time gave up the pursuit. We did not see any Indians on our march back to Sandy. We arrive at this place to day

W. H STONER Capt

JOHN GILBERT Lieutenant

OLIVER TOWNSEND Private

DAVID KNEELAND

ALBERT C. HOWE

H. M. WICKLAND¹⁵

JOHN GILBERT'S ACCOUNT OF THE LITTLE BLUE TRAGEDY

On October 23, 1917, John Gilbert, who was the lieutenant of Captain Stoner's company, now a resident of Red

¹⁴ The Constable train.—Ed.

¹⁵ The following letter to the editor was written by Mr. Hugh J. Dobbs of Beatrice on September 8, 1917:

William R. Jones, of Beatrice, and his father, Samuel Jones, deceased, were both members of the company of men who went from this city in 1864 to repel the Indian raid on the Little Blue. His memory is quite accurate and reliable on most matters connected with

Cloud, Nebraska, wrote the following interesting and informing letter to the editor:

I just received your letter inquiring about a boy that was killed in the Indian raid on the Little Blue River, August 7, 1864, and will tell you about as I remember it. August 7 was on Sunday. I was stopping at Kiowa stage station, six miles below what was called Comstock's ranch on the Little Blue River in Thayer county, on section 16, township 3, range 4, west. The Comstock ranch was on section 9, township 3, range 5, west, in Nuckolls county. This Sunday was a very hot day, and Theodore Ulig came down to Kiowa stage station, sent by his mother to get some eggs in a small tin bucket. Mr. James Douglas, owner of Kiowa station, wanted me to go up

this expedition. This is what he says about the men whose names you gave me and about whom you desired information:

John Gilbert he first knew in 1860, he thinks, and says that he was an employee of the Butler brothers at Oak Grove Ranch when he first knew him and was afterward a stage driver. After the Indian raid he married Libbie Artist, a sister of Frank Baker's wife, at Dewitt, and lived there for some time, and the last he knew of him he was living at Red Cloud, Nebraska, and he thinks he still lives there.

Captain W. H. Stoner was never sheriff of Gage county, he says; but the sheriff of the county, Joseph Clyne, did accompany the expedition and took with him F. M. Colter an ex-county treasurer whom he held as a prisoner, charged with embezzlement.

Oliver Townsend, Mr. Jones thinks, was not with the expedition; but in this he is evidently mistaken, as the report of the same was written by him and he signed it as a private.

David Kneeland was not a Gage county man but joined the party at Big Sandy where he was in charge of the Latham ranch.

Mr. Jones says that Albert C. Howe was a half brother of the late Church Howe and joined the party at Big Sandy with others. He says he died in Nemaha county long ago.

H. M. Wickland should read H. M. Wickham. Mr. Wickham lived in this county many years and died here about eight years ago. He was one of the first settlers of our county and the first man to marry a wife in the county.

Mr. Jones is able to recall the names of other Gage county men who were members of the expedition as follows: Daniel Freeman, Thomas and James Pethoud, Enoch Henry, Louis Graves, Ira Dixon, R. C. Davis, William Alexander all deceased; Leander Wilson, living near Beatrice; two of the Wells family and a man named Bagley from the Cub Creek neighborhood near here.

Jones says the expedition buried Bill Canada in his log cabin where the Indians killed him and buried members of the Eubanks family where their remains were found, and Hugo Ulick a German boy. "Curley" Ayres of Beatrice also claims to have accompanied the expedition.

Captain Murphy probably confused Captain Stoner with Mr. Clyne in his statement (page 10) that Stoner was sheriff of Gage county.—Ed.

home with Theodore to get some sickle sections for his mowing machine, as I had quit driving stage and was going to help him hay. Otto Ulig had been to the river at Brownville, Neb., and had some extra sickle sections. Otto Ulig was the oldest brother, Hugo was next, and Theodore was the youngest. Theodore, I think, was about 17 years old at that time. I think Kiowa station was east of section 16. As I remember it, Joe Ubanks was on 16, a mile west of Kiowa. Theodore was riding an Oto Indian pony and I was on a Cheyenne pony. When I was saddling up my pony I told him I could beat him home, which was over a mile and a quarter. He started before I could get ready and had a quarter of a mile the start. So we went. I chased him up to Joe Ubanks' ranch, over half a mile, but could not gain on him as I could see. So I stopped at the Ubanks ranch to let my pony get a breathing spell. It was off the road about fifty steps. When I got to the house, there I saw John Barnes. Joe Ubanks' wife was crying. I asked what the matter was, and they said that the Indians had killed Fred Ubanks across the river, south, as he was raking hay, and scalped him and took the horse that he was raking hay with. Then I forgot that I was chasing Theodore, and we started back to Kiowa station. We told Mrs. Eubanks to go on. She was riding an old horse. I saw some Indians, I think four, riding up the river west on the bluffs. When these four Indians came up with Theodore, the boy, they halted him about four hundred yards from home and held him, so Otto his brother said, and waited for me to come up; but I had gone back. It was around a bend and out of sight of me, so I did not see them, nor they me. When they could not make him wait longer they shot him with an arrow and gun, took his pony and left, so his brother said. The Ulig place must have been somewhere on section 16, township 3, range 4, west.

In regard to the spelling of Ulig and Ubanks: I think Ulig is correct but I am not so sure in regard to Ubanks. I may have spelt both names wrong sometimes.¹⁶

JOHN GILBERT.

¹⁶ Most, if not all, of the people in the neighborhood of the massacre were illiterate and did not know the correct spelling of one another's names, and so they came to be spelled as they sounded when spoken. The military officers spelled the name of the massacred family Eubanks, indicating that it was pronounced with the final s sound, and Mr. Gilbert evidently remembers it as having been pronounced that way. Because he now spells it simply as he heard it, he leaves off the initial E. Both Eubanks and Eubank are in common use, but there are more of the first than of the second found in print.

The name of the boy who was killed near Kiowa station is spelled

I am nearly eighty-one years old, and came to Nebraska at what was called Oak Grove Ranch, afterwards called Comstock Ranch, in April, 1859. J. G.

When I was running after Theodore Ulig I saw Indians going parallel with us on the bluff. I thought they were Pawnee or Oto, and I suppose Theodore thought the same, as he must have slowed up as he got around the bend and close home or they could not have caught him.

Under date of October 26 Mr. Gilbert wrote the following account of the tragedy which befell the Eubanks family:

I will try and answer your letter of October 22.

Will Eubanks and his family lived with his father and his family at what we called the Narrows, about four miles west of Oak Grove Ranch. Will Eubanks was the oldest son of the elder Eubanks. Joe, who lived west of Kiowa stage station, was the second son; Fred, who was stopping with Joe, was the next son; the youngest boy, who was thirteen or fourteen years old, lived at home with Will and the old man. Fred was killed west of Kiowa station, and Joe was killed just east of Kiowa station, in the low bottom where he was hunting a place to mow. We did not find him at that time. They shot him with an arrow and took his pony. Those two families that lived at the Narrows were composed of Will and his wife and one child, the old father and his wife, two girls, and the young boy. I helped bury them that were killed at the Narrows. Will Eubanks and his wife and child had gone up to the Kelley ranch on a visit, it seems, leaving the youngest girl at home. The Indians killed her accidentally, trying to take her prisoner. When Will and his wife came back, about three o'clock in the afternoon, Will was in front, and the first the others saw was Will running back, the Indians chasing him and shooting at him with arrows. They were close to the river, and he jumped down a bank about eight feet high and got away, as they could

Ulig by some of those who were personally familiar with the events and Ulick by others, among them George A. Hunt, now a well known citizen of Crete, Nebraska, and Hugh J. Dobbs. But I am not able to find names so spelled in any publication, while Ulich is not uncommon, and that, probably, was the boy's name. The name of one of the men from Beatrice who was killed at Oak Grove Ranch is spelled both Kelly and Kelley; the weight of opinion seems to favor the latter. Nelson Oberstrander's name has often been spelled Ostrander, but in a letter to the editor dated October 20, 1917, Mr. Hunt says, positively, that Oberstrander is correct.—ED.



JAMES COMSTOCK, JOHN GILBERT AND OREGON TRAIL MARKER
Near site of stagecoach incident mentioned in page 23. Photographed
by A. E. Sheldon, June 14, 1918

not follow him on horseback. He died on a sand-bar across the river. This information was given by Laura Roper who was taken prisoner at that time. As she came back with Will Eubanks' wife they saw the Indians chasing Will and they hid in a washout, but the Indians found them and took Laura Roper, Mrs. Will Eubanks, and her little girl prisoners. I helped to bury the old man Eubanks, Will Eubanks, the youngest boy and the girl. We buried the old man, the girl and the boy in one grave after they had been dead seven days. The old man Eubanks and the youngest [next to the youngest] boy had been down to Joe's place, where Joe was building his ranch, and were returning when they were killed. They had two yoke of cattle on a wagon and had got one mile west of the Comstock Ranch, or Oak Grove Ranch, where they were shot with arrows, and one of the oxen was shot in the side. The team went on up to the old man's and Will's place at the Narrows and went down in the timber southeast of there, where they ran the hind wheels straddle of a tree. They had been there seven days when we found them. We unyoked them, and they came out all right. Jim [James M.] Comstock, I think, was keeping the Little Blue stage station at that time, and I think that he went up after his family after dark, as he was at Comstock's ranch at the time that Kelley and Butler were killed; but somebody took the old man Eubanks and boy up to their place and we found them there, where we buried them.

In response to further inquiry Mr. Gilbert wrote as follows on October 26:

Some three or four days after the raid of August 7, I found myself, James Douglas and several more on Big Sandy Creek at Jenkins' Ranch in what is now township 3, range 3, east, Jefferson county. The news had spread to Beatrice, and all the men they could raise came up to Big Sandy, and with them was Mr. Stoner. When they got there, there were some men around Big Sandy that wanted to go up and see what was done, so we organized an independent company as we called it. They took a vote for captain, and Stoner beat me two votes; then they named me for first lieutenant. We got ready in a short time and came to the road on the Little Blue River. Sam Jones and his boy, Will Jones, were in the crowd from Beatrice. Joe Clyne, from west of old Dan Freeman's place, was in the bunch. He was sheriff of Gage county at the time, and he had a prisoner with him, as they had no jail in Gage county then. Well, we went up the Blue until we came to the upper Eubanks place. There we buried the Eubanks families. The old man was not scalped nor was the girl. I took a close

look at the old man because his hair was white, and at the girl because the Indians would call them squaw-killers. Ed Wells,³⁷ a preacher from Cub Creek, said in his little book that the girl was scalped.

We went on up the stage road until we got to Pawnee Ranch, at the mouth of Pawnee Creek. There was camped Cap. Murphy's company with one small cannon. I think it shot a four-pound shell. We told them what had happened below, that the Indians had burnt part of the ranches and a train at Little Blue stage station. That was Constable's train of eighty or more wagons, several trains all together, and Comstock was elected wagon boss of them all. One mule train of twenty wagons was loaded with liquor. The Indians had spilt the most of it, but some of the men drank too much, I think, as it seemed when we got up to Liberty Farm stage station, about thirteen or fourteen miles above Little Blue station, and one mile above the Kelley ranch or Ewing ranch—that place changed names every time it changed owners—and at the foot of what we called Nine Mile Ridge. From that point the Oregon Trail, or Overland Stage road, did not touch the Little Blue River until it got about nine miles. There was another ranch that changed names as the ownership changed. I think

³⁷ This was not Edward Wells but his brother Charles W. Wells, author of *A Frontier Life*, the book to which Mr. Gilbert refers. On August 7, 1864, Mr. Wells and his brother, Richard, were at Spring Ranch, about a mile beyond Pawnee Ranch where they spent the night for better protection. The Indians unsuccessfully besieged Pawnee Ranch the next day. It does not appear that Mr. Wells ever lived at Cub Creek. He tells a story of the Little Blue massacre in his book, chapters IV and V. *The Omaha Nebraskan*, of August 17, 1864, contains a letter from Lieutenant Charles F. Porter, of the Second Nebraska Volunteer Cavalry, dated Fort Kearny, August 14, in which he gives information obtained from the Overland coach bound west from Atchison which supports the statement of Mr. Wells. About four miles west [east] of Oak Grove bodies of two young men were found dead and stripped of all clothing. Next, two hundred feet away from "Hubanks" ranch, was the body of a young woman, stripped of clothing, scalped and horribly abused and then mutilated. She appeared to be about seventeen years old. The body of Mr. "Hubank" (William) lay on the opposite bank of the river. Mr. Wells says that the youngest Eubanks boy was fatally wounded at the house when his brother, William, was killed. These two, their father and the boy with him, according to Wells twelve years old, and the girl whose death is described by Gilbert, probably comprise the five who were buried by the detail of soldiers according to the statement to Mr. Weston, page 16. Gilbert evidently omitted the youngest boy.—Ed.

the last name was Milegan and Mudge ranch [Buffalo]. When we got to Liberty Farm station the house had been burnt, but the barn was not. It was raining, so we all got in the barn that could. There Joe Clyne, the sheriff from Gage county, and our captain had some trouble. Stoner could not bluff Clyne; so after that Stoner would not give orders. He was so embarrassed that the first chance he got he told me to give the orders. So after that time he looked to me to control the men. Stoner was all right but embarrassed. So that is all I know about Cap. Stoner.

So it was about dark when we got to Pawnee ranch and met Cap. Murphy. We started down the next morning and got to Little Blue station and camped. It was not burnt. Murphy's men and some of our men commenced to drink too much. The sheriff of Gage got into trouble again, and Constable, the wagon boss, and Sam Jones, from Beatrice, got in trouble, and Cap. Murphy asked me if I could control the men. I went to Sam Jones and Constable—they were sitting on an oxyoke—told Sam Jones to get up and go away. He did so. Constable turned around and said, "Who are you?" He knew well who I was, as we had some trouble when the Indians chased us back to his train which was about the place that Theodore Ulig was killed. We were on the coach—but that is another story. Bob Emery was driver. So Cap. Murphy had the liquor all spilled. The next morning Cap. Murphy said he wanted us to all go with him two days—one day south, then up the Republican River one day, then he would go back to Kearny, and we would go back home; and he asked all that were in favor to step two steps forward. I stepped two steps, so did the most of the men; as I did not think we would see any Indians because I thought the raid was over. Murphy had about sixty men, and we had as many; but we gave six or eight of the Beatrice privates leave to go back. We started south from the stage station. As I was well acquainted going south, I acted as guide. Constable was along with us, as the Indians had driven all the cattle he had away when they burnt the train. When we got four or five miles some of the men said they saw buffaloes or Indians. They could not tell because it was foggy. The men from Beatrice had a tiny spy glass, but they had deserted us and took the glass with them. So Cap. Murphy told me to pick two men from our men and send them to see. So I picked Joe Clyne and another man—I think it was Constable, the wagon boss. We were about three-quarters of a mile west from Elk Creek. It was so foggy they could not tell whether it was buffaloes or Indians, so they reported. Cap. Murphy said send two more men, that made four men—not to come back until they found out what it was, and we waited

until they came back. So they went to the creek and all stopped but Joe Clyne. He found a place to cross and went east. He could see something but could not tell what until he saw Indians running both sides of him trying to cut him off from getting back. He gave them a chase, threw away or lost his gun and lost his hat. The first we saw he was coming back, his horse, which was black, all white with sweat. So I told Cap. Murphy that he could not cross the creek there, as he had the cannon and two wagons, and we had a wagon. I took him to where the old Fort Riley wagon road crossed Elk Creek in going to Kearny. The bridge was gone, but the creek was dry there. That was three or four miles down the creek from Nelson, in Nuckolls county. We went up there and crossed the creek but had not gone far before we saw plenty of Indians. Cap. Murphy was afraid our men would not stand, so he kept all of his men in a bunch and started us independents out in a skirmish line, two in a place, about fifty steps apart. The main body of the Indians started back towards the Republican River. There were two or three hundred of them in the skirmish line. The most of them had guns but not as good as ours. There was one boy with Murphy not over sixteen or eighteen. He said he did not belong to Murphy's company. He was with me, and Constable came over where the boy and I were and said he was going with me. So there were three of us in that bunch. We had not been out long before Cap. Murphy shot the cannon loaded with shell. He elevated it too much, so they said, and broke the timber, so could not shoot any more. When the shell whistled over our heads it made an awful noise. We followed them in that shape until we could see the Republican River. The only thing that saved us was shooting the cannon, and there were ten companies of Kansas militia coming up the road from Marshall, Kansas, and we did not know they were coming; but the Indians knew it as their scouts had seen them. We kept after them until we lost one man. It was Constable, the wagon boss. I and Constable and the boy got somewhat too far west, as we were after the biggest crowd. The skirmishers of the Indians halted, so we halted. I noticed that some of them started on both sides of us, to cut us off from the balance of our crowd, and spoke about it to Constable and the boy. I told them I would not stay longer, so I started back as fast as I could, but Constable stayed to get a few more shots. The boy followed me. I was looking for the balance of the command and never looked back. We went down a draw and up the other side, fast. When we got over the draw—the boy was always looking all around—he holloed me that Constable's mare was coming out of the draw—without Constable. So he said that Constable was on

the horse just before we went down in the draw. He said let's go back. I had no notion of going back until he spoke about it. I just gave him one look and said all right, and we started back as fast as we could. When we came in sight of the draw, I saw an Indian out of the draw on the other side. He motioned to the one in the draw, and he left. When we could see into the draw the other Indian was just getting on his pony. We shot at him as he went down the draw but missed him. The Indians in the skirmish line stopped then, and we commenced to shoot at the bunch but intended to run again if we saw them starting to cut us off again. We were shooting so long and so much that we drew them all to us. We saw the whole command coming over the rise as fast as they could run. That scared the Indians, and they drew back out of gunshot. The soldiers saw the horse without a rider, but they did not stop. They asked us who that was, and we told them, Constable, down in the draw. He was shot with an arrow in the side, pretty high up. I and the boy had not got off of our horses. They put him in the wagon, and we all started back. When we got back to Elk Creek, we crossed at the same place. The cannon and wagons were hauled by the men with ropes. We—The Independents—were the rear guard. Several hundred of the Indians followed back to Elk Creek, and we had to do some pretty fast shooting. They wounded some of our horses but did not cripple them. It was dark when we got across the creek. Then we started for Little Blue stage station, where Constable's train was burnt. Before we started back we shot at the Indians until it was too dark to see them. We were not more than forty minutes going there. When we got there one regiment of Kansas militia was there. Next morning Cap. Murphy went back to Fort Kearny, and we went back to Big Sandy Creek, and some of us went to Beatrice. I went to Beatrice. In talking to some of the Kansas men they said they saw Indians the day before on the other side of the river—the south side. They were scouts. That helped to save us, as the Indians were afraid to follow us back in the dark. That turned them back. That was the end of the raid. The Indians did not bother any more for some time.

On November 12, 1917, Mr. Gilbert responded to additional inquiries as follows:

The reason that the Indians had not attacked Kiowa was because there was an ox train corralled or camped about two-hundred yards west of the station with twenty-six wagons and thirty men going west, and one hundred or so yards east of the station were the twenty mule wagons loaded with liquor. The

ox train turned their cattle south; their herders said that they saw forty or fifty Indians go east on the south side of the river; but they went on a walk, so they thought they were peaceable. They went on east of Kiowa; there they met Joe Eubanks and shot him with an arrow, just around the bend, out of sight of Kiowa station. Some time after, he was buried, where he fell, by some train.

In my letter of October 26 I said that at the old man Eubanks' house there were two families. The old lady Eubanks and the oldest girl had gone to Missouri on a visit; so they were not killed. I was better acquainted with the older girl as she worked at Liberty stage station when I drove stage for the Overland Stage Company.

Somebody told that Jim Comstock helped bury the Eubanks family, but that is a mistake, as Jim went with the empty train that came to the Comstock ranch that Sunday evening and went by Kiowa station Monday, and all of the Comstocks were with it. So was George Hunt who was shot in the leg at Oak Grove. The men with that empty train said they saw the old man Eubanks and the little boy lying close to the road, about a half or three-quarters of a mile west of the Comstock or Oak Grove ranch. So somebody must have moved them, as the two yoke of cattle hooked to the wagon went on up home. We found them seven days after. One of the oxen was shot with an arrow. We pulled it out. The old man Eubanks and the boy had been down to Joe's helping him on his ranch as it was not all completed. I think Mr. Follmer is right when he tells where the old man Eubanks was buried. I helped bury all of the Eubanks family that was buried at that place. We buried the old man, the young boy and the girl all in one grave, and we buried Bill where he fell on the sand-bank. Just dug out all the sand we could and covered him up.

The old Fort Riley road crossed Elk Creek three or four miles down the creek from Nelson; so I have been told by old settlers; but we called it ten miles from Little Blue stage station, which was six miles northwest of Oak Grove Ranch—three miles or over north and about the same distance west, as the river came more from the north there. We called it twelve miles east to Kiowa; but the river has changed in some places, made cut-offs, as I found out when I went down to where the stagecoach turned around when we saw the Indians. I had said that we saw the Indians behind some second growth ash timber on a spring branch that emptied into the Blue close to the Thayer and Nuckolls county line on the low bottom. When I got there the timber had all been cut off and the low bottom had all been plowed up and the spring branch was all filled up. It was three or four hundred feet long, but there

was no sign of it, and the river had made a cut-off, and where the river made a short turn it was about filled up. So a person to look at it now would think it was all a dream on my part.

Mr. Gilbert's attention having been called to the statement of Captain Murphy that he detailed Captain Kuhl to bury members of the Eubanks family killed by the Indians and to the disagreement between that story and his own, he gave the following circumstantial account of the incident:

After we got back to the Little Blue stage station, which was about eighteen miles below Pawnee Ranch, Captain Kuhl—I never saw his name spelled before but we called him Captain Cool—Captain Kuhl wanted some of our party to go down to the Eubanks family's place and show him where they were buried; and so we all went. He was the only man that wore a uniform in the party. He never got off his horse, but we told him where to cross the river, and he went over to where Bill Eubanks was buried and rode in the brush some. We told where the balance were buried, or showed him. Before we started up on that trip we knew that they were not buried, as myself and James Douglas had seen them the Tuesday after the raid of Sunday. Tuesday was the day that the Indians chased us in the coach back to Constable's train.

We turned and went with the train up to Little Blue stage station. Some of us—myself and James Douglas of Kiowa Station—wanted Constable to bury the Eubankses, but he said it was getting late for breakfast, or dinner, and would not stop until he made camp, so we passed them. But when the train stopped at Little Blue stage station and he turned the cattle across the river, the Indians drove them off about a mile south, but the mule train of twenty wagons was left close to the station on the north side of the river. That was about one o'clock in the afternoon. After dark they unloaded all of the liquor and the men got in the wagons and went down the road, traveling all night. We passed the Eubanks place when it was real dark so did not see them. When we went up the road again with our company we buried the Eubankses. Ed Wells and his brother-in-law—Bartley, I think—was with us.

Mr. Wells [Charles W.] was correct about the little boy. I did not know of him until after the Indian raid as I had never stopped at the Eubanks house, although I had driven the stage ever since they came there. That was in the spring that they came. I do not know whether the little boy was buried

with the others or not, as I did not help to handle him; but I helped to handle the old father and the girl and Bill. I did not help dig the graves. I had forgotten the small boy. Mr. Wells thought the girl had been scalped because they had been dead seven days in awful hot weather, and some of the hair on top of her head had fallen off, and it was bare; but I had seen too many that were scalped to not know the difference.

THE BEGINNING OF RED WILLOW COUNTY

BY ALBERT WATKINS

Agreeably to an act of Congress passed for the purpose of promoting a general celebration of the centennial anniversary of our national independence, Governor Garber issued the following proclamation:¹

WHEREAS, Congress passed a joint resolution, approved March 13th 1876 recommending the people of the several states that they assemble in their several counties or towns on the approaching centennial anniversary of our National Independence and that they cause to have delivered on such day an historical sketch of said county or town from its formation, and that a copy of such sketch may be filed, in print or manuscript, in the clerk's office of said county and an additional copy in print or manuscript be filed in the office of [the] Librarian of Congress to the intent that a complete record may thus be obtained of the progress of our institutions during the first centennial of their existence.

Therefore in compliance with such resolution I do recommend that the people of this state assemble in their several towns and counties on the 4th day of July, 1876 and that they cause to have delivered an historical sketch of said town or county from its formation, and that copies thereof be filed in the office of the County Clerk of said county and in the office of [the] Librarian of Congress as by said resolution requested.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the state of Nebraska. Done at Lincoln, the capital, this 25th day of April A D 1876

By the Governor

SILAS GARBER

BRUNO TZSCHUCK, *Secretary of State.*

According to this recommendation Royal Buck was chosen to prepare a history of Red Willow county, which was read at a county celebration at Indianola on July 4, 1876. Mr. Buck had been active in politics, was editor of

¹ U. S. Statutes at Large, XIX, 211; Messages and Proclamations, Nebraska, 1866-1892, p. 155.

the *People's Press and Herald*, Nebraska City, and register of the land office at that place.² The address was printed in a local paper. The following nearly entire part of it seems to deserve preservation and further publicity in the publications of this Society:

In the fall of 1871, moved by the fame which the Republican valley had achieved, a few citizens of Nebraska City conceived the idea of opening up a settlement in the valley, and the location of a county and town. In October of that year, a company was organized under the laws of the state with a capital stock of \$100,000. Books were opened, and 15,000 readily subscribed, and 5 per cent paid in and the following gentlemen were elected as officers: President, Royal Buck; vice president, J. Sterling Morton; secretary, B. M. Davenport; treasurer, J. V. D. Patch; directors, Dr. J. N. Converse, W. W. W. Jones, John Roberts, John F. Black, Sam. Tate, J. H. Madison and V. C. Utley. [Name, Republican Valley Land Company.]

On the 4th of November the board of directors passed the following order:

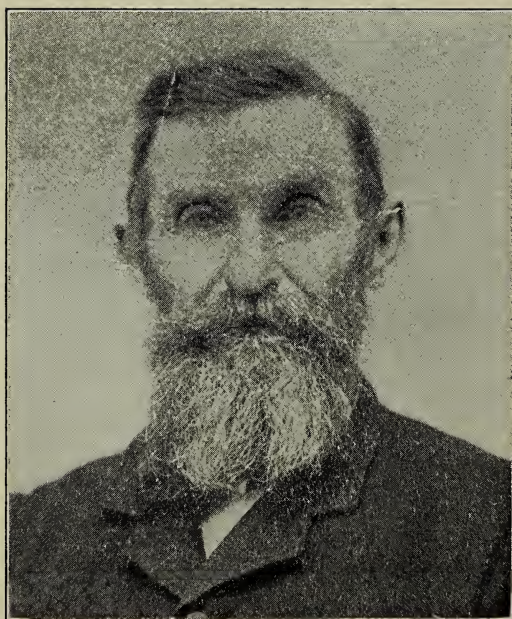
Ordered, That the president of this company be directed to organize such an exploring party from the directors and stockholders, as will be necessary—not less than ten in number, with Lathrop Ellis as engineer, and proceed to the Republican valley at the earliest practicable day, and locate a town site, and report his doings to the board of directors for their action.

In accordance with this order, the party was at once organized, as follows: Royal Buck, president; John Roberts, John F. Black, and W. W. W. Jones, directors, and John Longnecker, L. K. Sitler, Wm. Byfield, Frank Usher, Wm. McKinney and J. M. Davis, stockholders; Lathrop Ellis, surveyor.³

Two wagons were loaded with supplies for a thirty days' trip and were started in advance to the end of the B. & M.

² A biographical sketch of Mr. Buck may be found in the *History of Nebraska*, II, 346. His diary, in detail, of the Red Willow Expedition is in the possession of the Historical Society.

³ All the officers and other stockholders named in this and a foregoing paragraph were residents of Nebraska City, excepting Utley, who lived at Syracuse, Otoe county. Francis G. Usher, who was only twenty years old at the time of the expedition, now (1917) lives in Omaha, in good health. He did not settle with the colony but came back to Nebraska City. According to his recollection the settlers were Black, Sitler, Byfield, and Davis. Mr. Buck moved with his family to Red Willow in the spring of 1872. He acquired a large area of land and engaged in farming until 1889. He was the first postmaster of Red Willow. The records of the post office department show that he was appointed April 22, 1872.



ROYAL BUCK

railroad, then at Sutton, in charge of Messrs. Davis and Sitler. On the 9th the balance of our party left the city on the cars and joined our teams at Sutton on the evening of the 10th. On the morning of the 11th we were early on the road in the good old-fashioned emigrant style, following the grade of the B. & M. railroad to Fort Kearny. From here we turned south, crossing the divide, and reached the Republican valley at the present town of Orleans, where we found two settlers. At the present town of Melrose⁴ we found a few Swedish settlers with an adobe stockade, where they had the previous winter fortified against Indians. On the 17th we arrived at Arapahoe,⁵ which was then being occupied as a town site by its one settler, a Mr. Love and family. One or two Swedish bachelors were also located near.

At this point a severe snow storm overtook us, and we were obliged to go into camp on west side of Muddy Creek, where we remained until the morning of the 20th when we again ventured out for some point farther west. The snow being deep and drifted, our progress was necessarily slow. At Deer Creek—Burton's Bend—we found the irrepressible Ben

⁴ Melrose was situated on section 17, township 2, range 19 west, about a mile and a half west of the present town of Orleans. In August, 1870, a company of about forty men, among them General Victor Vifquain, undertook to establish a settlement in the Republican valley. A majority of them, led by General Vifquain, started a town called Napoleon, which was situated about a mile southeast of the present Orleans, and the rest laid out Melrose and at once built a defensive stockade on or adjacent to the site. The Napoleon project was soon abandoned, but a settlement was established at Melrose in the spring of 1871. At the first election in Harlan county, held July 3, 1871, Alma was chosen as the county seat by a vote of 27 against 5 cast for Napoleon; but because no consistent organization was maintained, Acting Governor James issued a call for an election of county officers and the choice of a county seat to be held May 20, 1872, at which Melrose won the contest for the county capital against Alma and Republican City; but after about two years of litigation the district court decided that Alma was the county seat by virtue of the first election. Thereupon Melrose, which had become a place of importance, declined rapidly, and by the end of the year 1876 it had been abandoned. See *Centennial History of Harlan County in Harlan County Standard*, April 25, 1879; speech by William Gaslin, at Alma, April 14, 1880; J. A. Piper, *History of Harlan County*, in *The Alma Record*, March 3, 1912; Andreas, *History of Nebraska*, 958-961; Nebraska State Historical Society, *Collections*, XVII, 230.

⁵ See footnote 4 to *Incidents of the Indian Outbreak of 1864*, this volume, for some account of the founding of Arapahoe.

with some fine ricks of hay. Supplying our horses with what we could carry at two cents per pound, we pushed on. At the Medicine we found an Irish family by the name of Foley.⁶ Heretofore we had found the streams either bridged or fordable, but here, no bridge, no ford, an ice bridge lacking strength to carry us over. We unloaded our wagons, carrying our freight across on our backs, taking our wagons across by ropes and our horses singly.

While we camp for the night, about twenty teams loaded with buffalo meat, killed near Red Willow, come in and cross as we did. In this party is a man by the name of Weber, badly frozen, having been lost in the late storm. He lived to reach Juniata, where he died from the effects of his injuries. On the afternoon of the 22d we go into camp in the grove on the bank of Red Willow, near the mouth. The next day we spend in making such an examination of the country, as the deep snow and cold weather will permit, and we unanimously agree that this is the "Eureka." We experience much difficulty in finding section lines and corners owing to the fraudulent manner in which the public surveys have been made, and the deepness of the snow—it now being about twenty inches on a level. But go to work in earnest, make the preliminary survey of our town site, it being section 17, town 3, range 28 west—select our homestead and preëmption claims, and on the evening of the 28th of November, 1871, we gather around our bright camp fire of dry ash logs, and hold the first political, and first religious camp meeting ever held in the territory comprising Red Willow. Mr. Jones is elected chairman, and Mr. Black is secretary. We offer prayer and thanksgiving to God for His kind care and protection of us during our almost perilous journey, for the blessing of health which we so fully enjoy, and for the success which has so far crowned our efforts, and then we proceed to name our town. Various names are suggested and discussed. On motion it was unanimously voted to call our town Red Willow, also that we will proceed to secure the organization of a county 24 by 30 miles to be called Red Willow county. Though this was the first organized effort to form a settlement thus far up the Republican valley, yet it was not the first settlement in what is now Red Willow county. That honor belongs to our fellow citizen John S. King, who had selected the claim, which he still occupies, about a month prior

⁶ Muddy Creek enters the Republican River not far south of Arapahoe, Deer Creek at a point seven miles farther west, and Medicine Creek seven miles still farther west, about half a mile below Cambridge. These creeks flow in a southeasterly direction, and their mouths are all in Furnas county.

to our coming, and had a small log house partially completed. While camped here we lived high. Wild turkeys, deer, antelopes and buffaloes are here in great abundance, and our nimrods bring a liberal supply to camp and we take trophies home with us.

It is proper to state, that while we have been here we had the company of three trappers, a Mr. Zink from Wisconsin, Mr. Wm. Proctor, now residing twelve miles up Red Willow, and a Mr. White. On the morning of the 29th we break camp and commence our return journey, through intense cold, deep and drifted snow, and reach our homes on the 10th of December, but not until the report had reached our friends that we had all perished. As we crossed the then uninhabited "divide," between the Republican and the Platte, or between Orleans and Kearney, we saw abandoned wagons scattered the whole distance, some with loads of corn, some with loads of meat, some with trunks and baggage, and some empty. Some with wagon boxes nearly ate up by the famished and starving horses and mules which drew them. When the storm had subsided, drivers and teams had sought the nearest settlement as best they could.

On our return, our company approved our work, and published in pamphlet form our doings, together with a description of the country, followed by the publication of two or three numbers of the *Red Willow Gazette*—several thousand copies—and Red Willow became extensively known as the place where a colony would settle in early spring. Our state legislature met in January following, and we prepared a bill defining the boundaries and naming Red Willow county. The bill fell into the hands of a bad general, was delayed in its passage, and unfortunately did not reach Governor James for his approval, until a quarrel had sprung up between the legislature and that functionary, and he had prorogued them and refused to sign this and other bills. Thus we failed to secure the early organization of the county that we had planned. We were delayed somewhat in making our filings in the land office, then at Beatrice—waiting for the plates to be prepared by the surveyor general. On the 10th of January, however, we were able to make our filing. At the same time the first homestead entries were made by Messrs. Black, Longnecker, Jones, Wm. Byfield, Davis and Mrs. Shaw. Quite a number of others soon followed, many of which were never occupied. During the winter a large number of persons were enrolled as members of the Red Willow Colony. But there was some extreme bad management by the company, and those who should have started out in a body, under competent guides and help, were left to start alone, or in small groups, and when they arrived in the

valley, were beset by parties interested in other towns and counties east of us, and no story of Indian hostilities and prospective dangers were too great to imagine and tell as facts; and thus a large number of Red Willow colonists are settled all along the valley east of us.

Harlan and Furnas counties have reaped quite a heavy harvest from our sowing, notwithstanding every precaution possible had been taken to evade it. Anticipating not only the dangers, but the fear of them, as president of the company, I had secured from Gen. E. O. C. Ord, then in command of this department, the assurance that a sufficient military force should be thrown into camp at Red Willow as early in the spring as possible. Accordingly, early in May, two companies, one of cavalry and one of infantry, established a camp on the east side of Red Willow, on section 16, where they remained until November following.

FIRST ARRIVALS

The first arrivals here in the spring were Messrs. Hunter, Hill, Korn, H. Madison and W. Weygint and son on the 29th of April. A few days later, Mr. L. H. Lawton and family, Mr. Young and family, Henry Berger and several other single men arrived. In May quite a number of families came, also Mr. Thomas with his herd of cattle, and others continued to drop in during the summer. In the summer of 1872, the Red Willow Town Site Company sent out a surveying corps, under Prof. W. W. Jones, to survey and make an authentic plat of the town. In the exploration and survey, the company expended about \$700. In neglecting to follow up the settlement first made, the amount proved an entire loss, and the land is now occupied by preëmtors and homesteaders. On the Fourth of July, Mr. W. M. Hinman came with his portable steam saw mill and made settlement where his mill has remained until the first of May last, when it was removed. While it remained it was a very great help to the county, and all regretted its removal.

DANGERS FROM INDIANS

There may have been times when our settlers have been in danger of Indian depredations. That many had fears, is true. But one fact is remarkable, that though this country has, up to this year, been the hunting and camping ground of the Sioux, yet since the first settler reached here, not a Sioux Indian has been seen in the settlements, no depredations of any kind have been made, and not a horse or any other animal has been driven off or stolen by them. During the summer of 1872, the Pawnees passed up on their annual hunt, loaded their ponies in Hitch-

BEGINNING OF RED WILLOW COUNTY 35

cock county and, returning, made a camp on the banks of the Republican just east of Red Willow, where they remained three days, giving us a chance to see something of Indian camp life and war dance. They came and went peacefully and were only a brief annoyance as most intolerable beggars.

While here there was not a herd of cattle in the settlement that could be kept in a corral even without being tied, so intense seemed the fear of these dumb brutes of the redskins.

In the summer of 1873 the same tribe again passed through the county, and while hunting in the western part of Hitchcock county, were surprised by their old time enemy, the Sioux, and near one hundred men, women and children were massacred and left to bleach in the sun. Their exit from the valley was in frightful haste, and their visits have never been renewed.

FIRST YEAR'S FARMING

Our first year's farming was, on the whole, quite satisfactory. Very few, if any, furrows were turned before the first of May, 1872, and all planting had to be done on the sod, and the latter part of May and most of June being very dry, much of the planting did not germinate until about the first of July. But those who were fortunate enough to plant early in May raised very fair crops of corn, potatoes and other vegetables, some of the cornfields yielding from 15 to 30 bushels to the acre.

SECOND YEAR'S FARMING

Our second year's farming was more satisfactory. Only a few fields of small grain were sown, and they gave a very fair yield. Corn did reasonably well. Some damage was done by the grasshoppers, which came upon us about the middle of September. Potatoes were badly damaged by the bugs, mostly by the ash colored blister bug.

THIRD YEAR'S FARMING

1874 will long be remembered as a complete failure. The hot, blistering south wind commenced to blow early in June. Comparatively, no rain fell during June and part of July. Five straight weeks of drouth and burning wind. The heavens over our heads seemed like heated brass, and the wind like the breath of a furnace. All small grain and garden vegetables were early ruined. Corn badly damaged by the intense heat and drouth, and then, to add to our calamity, about the middle of July the locusts settled down upon our fields in clouds, and, in a few days, what was left of our cornfields from the drouth, was stripped and ruined, the bare and blistered stalks only stood up as if to mock us in our desolation, and as we stood

still before the devouring hordes, we were made to fully realize how powerless is man to stay the ravages even of insects. From the best information that can be obtained, not a hundred bushels of grain of all kinds were raised in the county.

This was a severe blow to our citizens. Nearly all had come with limited means, which now being exhausted, it became a serious question to every one, What shall we eat, what shall we drink, and wherewithal shall we be clothed? It was indeed a trying time. Gloom settled over almost every household. If ample means had been at hand, nearly all would have left—some did leave—not only in disgust with the country, but with the spirit of murmuring which took possession of the children of Israel in the wilderness; while others, though humbled and prostrated by this stroke of providence, yet turned trustingly toward the source of strength, and believed the promises of holy writ. “Trust in the Lord, and do good; so shalt thou dwell in the land, and verily thou shalt be fed.”¹ In the latter part of August a meeting was held at Red Willow, at which representatives were present from all parts of the county. At this meeting our circumstances were fully discussed, and this conclusion reached: “That we would make a canvass of the county, and ascertain the extent of actual and prospective needs of our people, to be reported to an adjourned meeting, and that we would advise our citizens to stand by their homes, and we would ask our eastern friends for aid.” Accordingly, the county was divided into districts, and a canvassing committee appointed, and the meeting adjourned to meet at Indianola about the first of September. At this meeting a full report was made which showed that there were but few families having either supplies or means of purchasing beyond four or six months, and many in want of immediate assistance. A “Relief Society” was organized, and solicitors of aid appointed to present our needs to eastern friends. Dr. A. J. Shaw was appointed to represent us at Crete, where he was about to remove, Royal Buck at Nebraska City and other places. The latter place was visited late in September, and nearly a car load of flour, groceries, clothing, etc., secured, which was received late in October, it being the first aid received. Soon after this a “State Relief Society” was organized and an active canvass commenced in behalf of all devastated districts. Before much assistance had been afforded from this source, through the efforts of Dr. A. J. Shaw at Crete, much valuable aid was obtained and forwarded to this county. Soon after the war department made large donations of clothing, boots and shoes, and during the winter the State Aid Society was enabled to make large shipments to all the needy districts.

¹ Psalms, XXXVII, 3.

The legislature authorized the using of \$50,000 in bonds, to be invested in seed, grain, etc., which, though badly managed, gave many farmers seed to make a new commencement, who could never have procured it without this help, and thus our people were carried safely through a long and severe winter, and through another seed time; and in calmly looking over these trying times, even skeptics and doubters were forced to admit that

In some way or other the Lord will provide.
It may not be my way,
It may not be thy way,
And yet, in His own way,
The Lord will provide.

OUR FOURTH YEAR'S FARMING

was a success. Though many plowed, planted and sowed in doubt and fear, though there were some partial failures in small grain, yet, as a whole, when the harvests were all gathered, it was pronounced good, very good! Some localities were visited by the locust, yet their stay was short, and damage light. But from about the first of June to the middle of September they were flying over our heads daily in clouds, going north.

So far during the present year we have had immunity from them, and doubtless the prayer of all is, "Good Lord deliver us."

POSTSCRIPT.—Between the 20th of July and 10th of August the grasshoppers made their appearance in greater numbers than ever before, and as a consequence not a field of corn in the county was spared; all other late crops, except sugar cane, shared a like fate. This, together with the extreme heat and drouth which preceded the grasshoppers, made the devastation more complete than any previous year.

In looking back over these three years, with the exception of the last, there has been but little to encourage immigration, but much to discourage even those who were here. In fact, it would have been but reasonable to suppose that we would lose rather than gain in population. But by a reference to the census as taken by the assessors yearly, we have this very gratifying result: 1873, census not taken; 1874, population 545, assessors' valuation of property \$66,318; 1875, population 602,^s assessors' valuation \$70,000; 1876, population 662, assessors' valuation \$60,000.

^sLate in the year 1874 Brevet Brigadier General Nathan A. M. Dudley, then in command of the garrison at Fort McPherson, as major of the Third Cavalry, investigated conditions in that part of the state, for the department of war. He estimated the population of Red Wil-

The last year's valuation of property is on a lower basis, which accounts for the apparent decrease in taxable property.

COUNTY ORGANIZATION

I come now to a subject I would gladly pass over in silence, for connected with this is so much that is not laden with "pleasant memories." But history, to be true, must drop no facts which are vital. The people make the facts. The historian only records them. So, if I relate unpleasant facts, blame those who made them. In looking over this subject, I am led to believe that the strife, envyings and bitter feelings which have grown up in this connection would never have been but for the interference of adventurers and speculators, not citizens of this state.

At the special session⁹ of our state legislature held in 1873 a bill was passed, after much strife and opposition, defining the boundaries of Red Willow county as previously planned by the Nebraska City company. The bill was approved by the governor on the 27th day of February, and on petition to the governor an election was ordered and held on the 27th day of May 1873.

There was but one poll opened in the county, and that was at the house of Wilburne Morris, on section 15, township 3, range 28 west. Together with the election of the first officers, was also the question of locating the county seat. A few weeks previous to the election, a town site, to be called Indianola, had been selected by one D. N. Smith, of Burlington, Iowa, on section 7, township 3, range 27 west, some five miles east of the center of the county, and the issue at the election was between this and section 16, town 3, range 28—Red Willow—for county seat.

The opposing candidates were, on the Indianola side: For commissioners, W. S. Fitch, W. B. Bradbury and W. H. Berger; probate judge, E. S. Hill; sheriff, G. A. Hunter; county clerk, I. J. Starbuck; surveyor, P. T. Francis; county superintendent, Edward Lyon.

On the Red Willow side was, for commissioners, Jas. H. Pricket, A. S. Boyer and John Longnecker; probate judge, W. M. Hinman; sheriff, John F. Black; county clerk, D. E. Brothwell; county treasurer, John G. Eaton.

low county at 800, while the local estimate was 1,000. General Dudley reported that though the local agents were conscientious in their reports of the destitution, they were not accurate. Nebraska State Historical Society, *Collections*, XVII, 40; Watkins, *History of Nebraska*, III, 325.

⁹ This was a regular session; the special session of 1873 did not convene until March 27.

The judges of election were W. M. Hinman, L. H. Lawton and E. S. Hill.

A sumptuous dinner was prepared at Indianola, detaining a large number of voters until about four o'clock in the afternoon; yet it is supposed that no votes were lost to that place in consequence, nor to any of the candidates favoring it, and the result of the election was a majority of from three to seven for Indianola and its candidates. The whole number of votes cast was sixty-three.

In the canvass of votes for clerk, all, or nearly all, cast for Mr. Starbuck, were for clerk of district court, while those cast for Mr. Brothwell were for county clerk. No such elective office being known by our statute as clerk of district court, the canvassers took these to mean county clerk, and by this construction Mr. Starbuck had a majority, and so was declared elected county clerk. The Red Willow party claimed that there were men voting who had never before been known as citizens of the county—even the postmaster and justice of the peace at Melrose, in Harlan county, and his clerk in a mercantile house there, voting, gave just cause for complaint, and it was decided to contest the election, on the ground that a number of votes greater than the majority had been cast for Indianola and its candidates, by men not citizens of the county under the law. Consequently a suit was brought before Justice Colvin of Arapahoe, contesting the election.

The case was a long and tedious one, lasting several days, and a large number of witnesses summoned. After a full hearing of the case and arguments on both sides, Justice Colvin sums up his finding as follows:

Therefore, It is on this first day of August, A. D. 1873, considered and found by me that the said D. E. Brothwell, having received a majority of all the legal votes cast for county clerk in Red Willow county, Nebraska, at an election held in said county on the 27th day of May, 1873, was duly elected clerk of Red Willow county according to law.

Also, That A. S. Boyer, John Longnecker and Jas. H. Pricket, having received a majority of all the legal votes cast for county commissioners of Red Willow county, Nebraska, at said election, were duly elected county commissioners of Red Willow county, according to law.

Also, That J. F. Black, having received a majority of all the legal votes cast for sheriff of Red Willow county, Nebraska, was duly elected sheriff of said county, according to law.

Also, That E. S. Hill having received a majority of all the legal votes cast for probate judge of Red Willow county, Nebraska, at said election was duly elected probate judge of Red Willow county, Nebraska according to law.

Also, That section sixteen (16), town three (3), range twenty-eight (28) west of the sixth principal meridian, having received a majority of all the legal votes cast for county seat of Red Willow county, Nebraska, at said election was duly located as the county seat of Red Willow county, Nebraska, according to law.

GEO. W. COLVIN,
Justice of the Peace, in and for Furnas county, Neb.

Following this decision the officers named proceeded to qualify according to law. A proclamation was made by the commissioners declaring section 16 the county seat, and a writ of attachment issued by Justice John G. Eaton for the possession of the county seal and records. This writ was executed by Sheriff Black, and the books and seal obtained. Then came a contest between officers—each set claiming to be the legal officers and each claiming the possession of the books and seal on legal papers—and for several days the books were some like the English charter of Connecticut, hidden during this contest. An appeal was taken from the decision of Justice Colvin to the district court, and it being the opinion of attorneys that this act left Indianola officers in possession of the offices until the case was decided, therefore the Red Willow officers delivered up the books and seal, and ceased to perform the functions of office. Thus at present writing the case stands on this appeal it not having reached the calendar or docket of the court having jurisdiction.¹⁰

POST OFFICES AND MAIL ROUTES

The first post office in the county was established at Red Willow, and Royal Buck was appointed postmaster in April, 1872. In the same month Congress declared the road from McPherson to Red Willow a post road; but no service was placed on it until July 1, 1873—W. D. Wildman, contractor, with North Platte as the terminus, instead of McPherson.¹¹ By act of Congress approved March 3, 1873, the road from Alma, Harlan county, to Red Willow was declared a post road, and the first mail which reached us by a regular contractor was on this route, on the 7th of May, 1873.

Previous to this we had mail when we could get it, or rather, when somebody happened to go where it was with authority to get it. During the summer of 1872 our mail was received from Fort McPherson by the soldiers' weekly supply train, and after the camp left here, we received our mail semi-occasionally at the expense of the citizens, sometimes from McPherson and sometimes from Arapahoe.

The second office was Indianola, established in the summer of 1873, with Dr. A. J. Shaw postmaster. A little later the offices of Canby and Lebanon, on the Beaver, were established,

¹⁰ In 1876 the district court decided in favor of Indianola. At an election held August 2, 1891, the county seat was moved to McCook but a dispute over the vote of Coleman precinct was kept in the courts until 1896, so that the removal did not take place until that year.

¹¹ May 14, 1872, "from Cottonwood Springs, via Stockville, to Red Willow." *U. S. Statutes at Large*, XVII, 110.

with Dr. Bennet and N. S. West, postmasters, supplied from Beaver City and Wilsonville. The former office has been discontinued.

About the same time another office was established farther up the Beaver called Danbury, Geo. N. Gilbert, postmaster, supplied from Red Willow. The first mail bag was made of scraped buffalo hide and locked with a string of the same material.

During the summer of 1874 a mail route was established up the Beaver to Cedar Bluffs, in Kansas. During the same year a route was established from Red Willow to Valley Grange and Dr. C. R. Baker appointed postmaster at the latter place.

In the winter of 1875 a route was established from Buffalo Station on the K. P. railroad to Red Willow, and in March, 1876, another route was established from Red Willow via Carico to North Platte, on the U. P. railroad. These two routes give a direct north and south line between the two great thoroughfares.

POSTMASTERS

Indianola has had four—A. J. Shaw, P. H. Allison, G. S. Bishop and O. H. Cobb; Valley Grange two—C. R. Baker and H. L. Randall; Danbury also two—G. N. Gilbert (deceased) and W. S. Stilgebaur; Red Willow and Lebanon still retain first appointees.

DISTRICT COURT

The first session of district court for Red Willow county was held at Indianola, on the 28th and 29th days of April, 1875, Judge Gaslin presiding. A very short docket and soon disposed of. The grand jury found no bills of indictment and the judge, in discharging the jury, said he was not aware that during the four years the county has been organized any criminal cases arising in the county have been tried elsewhere, and the fact that no persons are held on bail and the grand jury find no bills is a high testimonial in favor of the moral character of this people. It is proper to add in connection that only two fines for violation of law have been adjudged and collected in the county, one for \$10 and the other for \$15.

MANUFACTURING

So far very little has been done by way of manufacturing. Mr. Hinman's steam mill, while it remained, turned out all the rough lumber used in Red Willow and Hitchcock counties, and it was a great convenience and help to our people in their first settlement and building.

Mr. J. F. Black has, for about two years, been doing a

small business in the way of cheese making, and his testimony of the value of milk from cows fed on our prairie grasses is most favorable.

On the 20th of May last Messrs. Leeland & Brown purchased of W. D. Wildman the northeast quarter of section 17, town 3, range 28 west—a part of the original Red Willow town site—for milling purposes. A part of the fixtures are already on the ground, and a saw and grist mill will be put in operation soon, the Red Willow furnishing abundance of water power.

CATTLE AND SHEEP RAISING

so far have proved very successful, being raised with the trifling expense of herding, as neither hay or grain are needed to any great extent.

Our principal cattle raisers are Mrs. Thomas and son, Messrs. Doyle & Bolls, Mr. N. T. Corey, Joseph Berger, and Mr. Welborn on the Republican, and Mr. Bradbury on the Beaver. Mr. Black and Mr. Bradbury have each a small flock of sheep.

PUBLIC HEALTH

Seldom has a newly settled country been so blessed in regard to health. It has been what physicians sometimes call "painfully healthy." No prevailing disease of a serious nature has ever visited us, and persons coming among us in feeble health soon become robust and strong.

During the year 1872 there were no deaths. In 1873 there were two—one a child diseased before coming here. No deaths in 1874. In 1875 there were six. Two were children and one an adult. Two of the others, Mr. W. H. Berger and Mr. T. P. Thomas, were by lightning and the other by drowning. The lightning strokes were remarkable. Although the deaths were about four weeks apart, were yet under very similar circumstances. Both were cattle raisers, both were attending their stock, and both killed near the same hour of the day—towards evening.

MYSTERIOUS DISAPPEARANCE

A German by the name of Schribel, one of the first settlers on Driftwood, left his home in the winter of 1874 for a trapping campaign on the headwaters of the Frenchman. In June, following, his skeleton remains, gun, and other equipments were found near Culbertson, where he had perished in some of the severe storms that marked that winter.

Mr. John D. Long, also a settler on Driftwood, left his home in May, 1875, to go up into Dundy county for a wagon left there during the winter and has never returned, and no tidings have been received of him, team or wagon, and it is feared that some accident has befallen him.

POSTSCRIPT.—In September, 1876, the remains of Mr. Long were found in his wagon among the sand-hills on the headwaters of the Republican, in Dundy county. Nothing but the bones were left, and a broken skull told the tale of a brutal murder.

SCHOOL DISTRICTS

The first organization of school districts in the county was in December, 1873, Red Willow and Indianola, both organized on the same day as number one and two. Up to January 1, 1876, thirteen districts have been organized.

RELIGIOUS

Very little of permanency in church organization has as yet been reached. The Christian denomination made a small organization at Red Willow in 1873. Another has since been made on the Beaver. In 1875 a Congregational church was organized at Indianola, also one at Valley Grange, and the preliminary steps have been taken for organizing the Centennial Congregational church at Red Willow. A few months since a Methodist Episcopal church was organized at Indianola. The United Brethren has also a small class at Red Willow.

SABBATH SCHOOLS

A union Bible class and prayer meeting was organized at Red Willow in the summer of 1872, and early in the summer of 1873 a regular Sabbath school was organized at the house of Royal Buck, with Mr. Wm. Overacker as superintendent and Mr. G. B. Nettleton of Valley Grange as assistant. The exercises were continued at the same place during the summer, and on Christmas eve a beautiful Christmas tree was prepared and over 800 persons received fruit from it. Late in the summer a school was organized at Valley Grange, and in September a picnic by the Red Willow and Valley Grange schools at the latter place was a very pleasant entertainment. Schools have since been organized at Indianola and on the Beaver.

COMMERCIAL

Like all new countries, commercial transactions have been on a small scale and attended by some changes and failures. The first stock of goods brought to the county was by Mr. T. P. Thomas, late in the summer of 1872; but finding his cattle business a much better investment, he soon discontinued his mercantile transactions. John Byfield also opened a small stock on his homestead adjoining Red Willow town site, in the summer of 1872, where he continued to carry on a small business until last spring, when becoming embarrassed he disposed of

his stock of goods to O. H. Cobb and suddenly left the state. Mr. Cobb removed the goods to Indianola, where he is still carrying on a small trade.

In 1873 W. S. Fitch opened a small store at Valley Grange, which he still continues to carry on. Mr. John Kelly has also a small store at the same place. A small stock of goods has been kept at Lebanon, on the Beaver, by Mr. B. F. Bradbury, and at Indianola, Allison & Wood opened a fair stock of goods in 1873, which promised some permanence for a time, but in a little over a year, like a lamp without oil, it went out.

In the summer of 1874 Drs. Shaw & Martin from Crete opened a drug store at Indianola, which they soon disposed of, and both returned to Crete in the fall. The store passed through several hands and is now owned by G. S. Bishop.

The only permanent success attained by any dealer in the county thus far is by Mr. J. R. Myers, who is doing an extensive and paying business at Indianola.

PROFESSIONS

The legal profession is represented by Maj. R. H. Criswell, G. S. Bishop, and I. J. Starbuck, all at Indianola; the medical, by Dr. J. S. Shaw, at Indianola, and Drs. C. R. Baker and H. L. Randall at Valley Grange; the clerical, by Theo. Stewig and G. W. McElroy, both of the Christian denomination.

COUNTY OFFICERS

The county officers have been as follows: In 1873, May election, W. H. Berger, W. S. Fitch and B. F. Bradbury, commissioners; G. A. Hunter, sheriff; E. S. Hill, probate judge; I. J. Starbuck, county clerk; J. E. Berger, treasurer; P. T. Francis, surveyor; Edward Lyon, county superintendent. In the drawing for terms of commissioners Berger drew for two years, Fitch one, and Bradbury the fraction of year.

October election, 1873, B. F. Bradbury, reëlected commissioner; G. N. Gilbert, sheriff; E. S. Hill, probate judge; B. B. Duckworth, treasurer; I. J. Starbuck, clerk; J. D. Hill, coroner; G. B. Nettleton, county superintendent, and P. T. Francis, surveyor. October, 1874, W. S. Fitch, reëlected commissioner. During the year, Mr. Berger dying, J. R. King was appointed to fill the vacancy.

In October, 1875, the following persons were elected: Elias Canoga, commissioner; Theodore Stewig, probate judge; Geo. A. Hunter, treasurer; W. H. Skinner, county superintendent; W. A. Springer, sheriff; P. T. Francis, surveyor, and Isaiah Bennett, coroner.

In closing the record of events of the brief period of our

existence as a county, I would say, I have endeavored to collect all facts which are important as history or as springs from which may yet flow streams of important events and results vast in the times which are to be. As a whole we have no reason to be ashamed of our record. Indeed we have much of which we can approve, much that is mere planting for a future harvest, and in the coming year let us remember that it is ours to plant, which, if we do wisely and well, there is an all wise ruler above us who doeth all things well and He will surely give us the increase.

ADDENDA

A settlement was made near the mouth of the Driftwood late in the summer of 1872 by Dr. C. R. Baker, John Stone and family and two Germans by the names of Schribel and Dietz. About the same time Mr. G. N. Gilbert and Mr. West made settlement on the Beaver at Danbury, soon followed by Mr. Solomon Boyer and sons, whose families came the following spring—1875. The settlement at Lebanon was in the spring of 1874, by Mr. B. F. Bradbury, Mr. West and others.

In connection with the county seat contest were some exciting and amusing incidents. After the Red Willow party obtained possession of the county books and seal, the Indianola party got out a writ of replevin and a search warrant for the lost property, but like the Paddy's flea, when they got where the books and seal were they weren't there, and while searching one house the Indianola sheriff was very severely hugged by one of the Red Willow party and carried out of the house backward at the same time calling in half uttered words on the bystanders, "in the name of the state of Nebraska", to assist him in the discharge of his duties. The other party claimed that while there was a law against resisting officers there was no law against hugging. Following this transaction came the Indianola sheriff with his posse of armed men—a wagonload and some on horses—with a writ issued by Justice Briegel for the arrest of several of the Red Willow party on a charge of resistance of an officer. Several arrests were made and a change of venue taken, and the case was taken before Justice C. R. Baker of Driftwood. On the examination before that officer the parties entered into a recognizance to appear before the district court, but here the matter ended. The case never came before that court for hearing.

A DESTRUCTIVE FIRE

occurred on the 14th of October, 1873, at Valley Grange. A very strong wind from the south, amounting to almost a gale,

was blowing, and a fire broke out on the Beaver and came across the divide like a tempest. Fire breaks were no barriers, and hayricks and sheds were swept away in a moment. The house of G. B. Nettleton was burned with all its contents, the inmates barely escaped with their lives.

NARROW ESCAPE FROM BUFFALOES

During the years of 1872-3 the citizens on the Beaver received mail at Red Willow, "taking turns" in coming for it once in two weeks. In the spring of 1873, a Mr. West, living or camping near Danbury, started over after the mail on foot, carrying his carbine. After he had reached the summit between the Republican and the Beaver, he came upon a buffalo cow with a young calf. The cow ran off, and he went up to the calf, spoke to it, patted it on the back and started on, and to his surprise the calf followed him. Traveling on a mile or more, he looked back and saw a large herd of buffaloes following him. They came within a hundred yards and halted. West turned and fired on them two or three times, killing one or two, when they again charged on him. He took to his heels and coming to the head of a draw, where there was a sort of cavern washed out by the water, he dodged in and the enraged buffaloes passed by him. After going a short distance and missing the object of their pursuit, they came back and, as he says, passed around him three times without discovering his hiding place and then left. In a short time he ventured out, slipped down the cañon and made his way to Red Willow in safety.

REMINISCENCES OF PAGE T. FRANCIS

The following reminiscences of pioneer life in Red Willow county contributed by Mr. Page T. Francis, a substantial early settler, was published in the *Red Willow County Gazette* of August 10, 1911. The contribution is a valuable illumination of Mr. Buck's history. It was procured through Mr. John F. Cordeal, the indefatigable student of the history of southwestern Nebraska:

STRIFE FOR COUNTY SEAT

I was born February 12, 1843, in the town of Leeds in the state of Maine. In May, 1861, I enlisted in the Third Maine regiment, Company A, and was discharged in December, 1862, for wounds received at the battle of Fair Oaks, Virginia, in McClellan's Peninsular campaign; and, by the way, I have got the bullet yet in my hip. I reenlisted in 1863 and served until

the close of the war. I was wounded in 1864 again and transferred to the Veteran's Relief Corps, for wounds received in 1864. I was discharged by reason of the close of the war in 1865. I came to Nebraska in April, 1867, to Otoe county. I settled first in Otoe county. I went to Webster county in 1870, and to Red Willow county, 1872. It was my home then until 1895. Since then my home has been in Dawes county, Crawford.

I went to Red Willow county in June, I think, 1872. I don't recollect the date exactly, but I think it was the early part of June. I took a preëmption where the town of Bartley now is. A part of the town is on the preëmption. I was there during the organization of the county and the location of the county seat. In the fall of 1871 a colony had come out from Nebraska City, headed by Royal Buck, who had taken up land on Red Willow Creek, and went back to Nebraska City and issued a paper in the fall of 1871 and in 1872, called the *Red Willow Gazette*, which advertised that country extensively, and in 1872 a great many people went up there and were disappointed, because they didn't find things as they had been represented. That is, there was to be a mill built, and when all these men came they found there was nothing done. They had taken their claims and desired to have the county seat located on the school section near the mouth of the Willow, but early in the spring of 1872 a man by the name of D. N. Smith, who was secretary of the Republican Land Association, which is a corporation which was in connection with the B. & M. railroad, he came there and made arrangements with Hill [Edgar S.] and Hunter [George A.] to have them prove up on their preëmptions and get more land on Coon Creek, near the present site of Indianola; and when we had our organization and election there were two places and two sets of officers, one where Indianola now is, and the other up at Red Willow. The election was very close, and both places claimed they had secured the location of the county seat. We had two county organizations, and the party that had located the county seat where Indianola is organized, got a set of books, records, seals, and commenced to do business. An organized party from Red Willow came down and claimed they were the proper officers and took the Indianola people by surprise and took the records and seals and carried them off to Red Willow. They intended arresting the officers of that party. It got noised around, and the adherents of Indianola hunted up the sheriff, Hunter, and we ransacked that country up there and found the records and seals and arrested all the parties who came down there and got them and brought them down to Indianola and had them bound over by our judge, Hill, for appearance at the district

court; and we so continued until nearly all the people in the county were bound over to the district court by one county judge or the other. They were in court for several years.

RELIANCE ON BUFFALOES

Now we had rather dry years at first there, and the settlers were nearly all people of limited means, and the buffaloes, which were very plentiful at that time through the country, were the main source of living. The hides fetched all prices, from seventy-five cents to two dollars apiece, and the meat was good eating, and the settlers killed a few buffaloes and took the hides to the railroad and would buy groceries. That was a great help to the settlement of that country.

MILITIA

As ammunition was a little high and guns scarce, we organized a company of militia to protect ourselves from the Indians, which were around here, though they never done any harm in Red Willow county that I know of; but we needed the guns for killing the buffaloes. We reported our dangerous position to the government, and we got a provision of eighty needle guns and a lot of ammunition, and that helped materially in supplying the people of that county. That was a scare put up because ammunition was scarce and guns were high, and we organized and got a lot of government guns, and they killed a lot of buffaloes.

GRASSHOPPERS

Now in 1874 there got to be a good many people in there, and they had put out crops, as much as their means would allow. It was a very dry year. I can't think of the date, but along when we were in hopes of raising something we got a swarm of grasshoppers in there that cleaned up everything. So that in 1874 there was absolutely nothing raised. Everything was destroyed by drouth and grasshoppers together. In 1875 we had a reasonable amount of rain, and we got a very fair crop. In 1876 we got grasshoppers again. We had a good prospect until the grasshoppers came in. They destroyed everything again in 1876, and the prospects for making a living there were very small. As that was about the time of the discovery of gold in the Black Hills, I went on the Union Pacific railroad to Sidney with teams and engaged in freighting from the railroad to Fort Robinson and the Black Hills, and stayed there until 1880. I was engaged in freighting there until 1880.

For a person who had never seen the grasshoppers it would be absolutely impossible to describe them as they were, to make

them understand it. I think in 1876 I had about 100 acres of corn, and in two hours after they commenced to light I believe they would average a depth of four inches all over the ground, and as much hanging to the stalks of the corn as could find holding places. A person who has never seen them, you can't make them understand it. I had a nice crop there in 1876, at ten o'clock in the morning, and at four o'clock in the afternoon there was absolutely nothing left on the place. I had an acre of onions, and every place there had been an onion there was a hole in the ground. You couldn't walk over a corn field any more than nothing. They would light on anything like a corn field or anything that was possible for them to eat, and they were thicker there than other places. They would gather in there.

In the summer of 1872 there was one company of soldiers camped on the Willow. Buck and some others represented they were necessary. They camped in tents. They had nothing permanent, and they did not stay very long. They left before cold weather. My recollection is there were not over fifty there all together. They camped right above where the old wagon road used to cross near where Helm lives now. It is quite a little ways farther north than where the railroad crosses—the old wagon road of the buffalo hunters. We had a bridge there. They camped right in the bend just above there.¹²

Here is another little thing. They organized in 1873. This Buck party sent a man by the name of Wildman down to Lincoln to lobby the legislature to make the counties larger than they had been making them. Their custom had been to make the counties twenty-four miles square. They wanted to make Arapahoe and Red Willow the county seats, and so they lobbied the legislature to enlarge the boundaries of the counties, to make them thirty miles wide north and south, so it would throw Arapahoe and Red Willow a little nearer the center of the counties.¹³ This old man Smith, the agent of the Republican

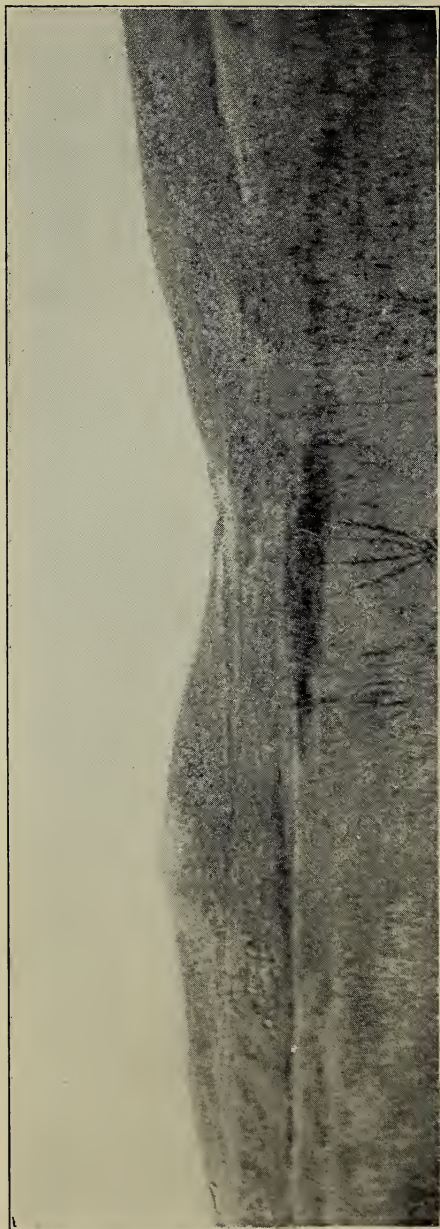
¹² The report of the adjutant-general, dated October 12, 1872, shows that there were then at Camp Red Willow, near the junction of Red Willow Creek and the Republican River, one company each from the Second Cavalry, Third Cavalry and Ninth Infantry, under the command of Captain J. D. Devin of the company last named. *Report of the Secretary of War, 1872*, p. 104.

¹³ Furnas, Red Willow and Hitchcock were four townships wide and five long, and Chase and Dundy the same width but still another township long, to reach the Colorado line. They were all established by the legislature of 1873. Phelps, established by this legislature, was of the regular form and size. So all the counties east of Harlan, to Gage, were four townships, or twenty-four miles square.

Valley Land Association, that was the same as the Lincoln Land Company, had got hold of a lot of land right where Bartley is, expecting when the counties were organized that would be the center of the county, and they would get the county seat located there where Bartley is. They had got several quarter sections of land in there, so when the bill passed the legislature changing the size of the counties from what had been their size, that is what started him out here to get land where Indianola is so as to get near the center of one of the counties. The B. & M. Railroad Company was expecting to come up that valley, and the land association had their men out to get land where they expected to locate a town, and he had secured a lot of land where Bartley is, but when the legislature changed the size of the counties it threw it all over to one side.

BATTLE OF MASSACRE CAÑON

The Pawnee came out there on a buffalo hunt to secure some meat. They crossed to the south side of the Republican River, way down below Red Willow county some place, and went up the Beaver and Sappa. The buffalo country was covered with them, and the Pawnee had pretty good luck, and they came up and went to cross from the Beaver to the Republican, near where Trenton is, and they met some buffalo hunters who told them their old enemies, the Sioux, were hunting on the divide between the Republican and the Frenchman, and they said that was not right, that the white men didn't want them to hunt, and they crossed the river and went along a long cañon that comes in from the north, now called Massacre Cañon, and went up this cañon eight or ten miles to get up near the top of the divide; but the Sioux had seen them and knew they were coming up that cañon, and they hid themselves back from the banks of the cañon, on both sides, until the Pawnee had got clear up in by them, and they came down on them from each side and just massacred them. They killed 64 right there on the ground and killed a number of others that died farther down. The Pawnee were not in any position to help themselves, so they took right down the cañon. I was there the next day. The Pawnee had put up their meat, and they had all their horses loaded—everything they could possibly cure, and it was nearly the whole tribe of Pawnee. They had nearly all their household goods, and they cut everything else from their ponies, and their meat and things was piled up and strung along. They even lost their dogs, hundreds of dogs and hides. The summer buffalo hides are no good for robes, but the Pawnee had taken the hides off and tanned them to do up their meat in and for other purposes in camp, and they had



MASSACRE CANON

Pawnee-Sioux Battle-field, August 5, 1873. Photographed by A. E. Sheldon, August 1916

all those hides. A great many people went up there and gathered up those hides and made leather things of them. Taylor made a house of them. They had killed two buffaloes [for meat]. The squaws had commenced to skin them when the Sioux attacked them. It was in the early part of the day.

In those cottonwood trees along the river a great many Indians had been buried. They laid poles or something across, where there were forks, and they wrapped them [bodies] in hides to keep birds or animals from interfering with them.

. . . ¹⁴

The land here in 1872 was out of the market, that is, you could not make filings until the land office was open and in running order at Lowell, which was the 8th day of August, I think. The other party had gone, but we stayed there to go to the land office and make our filings, and Hill came down and wanted to go with us. We told him we were out of grub. He said he was pretty nearly out. He had a little bit of flour and some molasses. We told him to bring it down and come on. He brought his stuff down, and we told him to put it in the grub box. We hadn't had any grub in it for some time. We had found several Indian skulls, and we had put them in the grub box for safe keeping, and when we went to put his grub in, he said, "My Lord, what are you fellows living on?" There was places where they were buried out away from the river, and they had put up forks and laid poles across, and they were buried on platforms of poles. But mostly they had put them up in trees there.

We were never troubled by the Sioux. The only Indians I ever saw in Red Willow county were the Pawnee, the Omaha and the Oto, that used to come up from their reservations hunting buffaloes. The only trouble with the Pawnee was their picking up and taking little things. Like one day I had been giving them some things, and I had a big sheath knife, and it was sheathed and thrown down on the ground by the wagon, and I looked and he had stuck his foot into the belt and walked away right straight. I hollered at him, and he just took his foot up and went right on. We were never in any danger from any Indians or anything of that kind.

I will tell you about a buffalo hunt. They were north of my place on Dry Creek, on the divide. A man by the name of Bill Berger, county commissioner, he had lost some horses, and heard that a party by the name of Clifford, a squaw man who lived on the Medicine, had found them, and Berger wanted to go over there and get them. He had no horses, so I took my

¹⁴ For further accounts of this battle see Nebraska State Historical Society, *Collections*, XVI, 165; *ibid.*, XVII, 38.

horses to drive him over there, and when we got up on the divide between Dry Creek and the Medicine we ran onto an Indian, and he raised up and stopped us. They were surrounding a herd of buffaloes and didn't want us to drive over for fear we would stampede them. We wanted to go on, but they insisted—they wanted us to go down where the camp was and wait until they had the hunt, and as there were too many of them for us, we complied with their request. They kept riding around this bunch of buffaloes until they got them kind of working in. They were on horseback and on foot too, but if the buffaloes would start to get outside the lines, the Indians would show themselves and turn them back. There was a big flat there, and when they got them pretty well corralled up there, they kept riding right around and shooting. They had guns and bows and arrows and things of that kind. They didn't have much ammunition. They shot a great lot of buffaloes in there in that way and left it for the squaws to take care of and dress the meat. The men aimed to kill the buffaloes on a very hot day, and the squaws would cut it up and hang it up in the sun, and it would cure nice and sweet in that way. They never used any salt. They had ordinary canvas tents that had been furnished them by the government. Some of them had tepees made of hides and canvas. They put up a lot of poles and tied them together at the top, and the tent was sheeted over this. When they moved they took them down, and the poles were bunched together on the sides of the horse and run back, and then they just piled things on top of the poles behind and dragged them. We could always tell plainly where a camp of them had been moving, because there was the pony trail in the center, and the pole trail on each side, where they had been dragged.

The following letter from William H. Berger adds interest to the foregoing sketch:

INDIANOLA, NEBRASKA, Aug. 10th 73.

DEAR BROTHER AND SISTER

I received your kind and welcome letter yesterday and was glad to hear from you once more. I don't know how it is that I did not receive your other letters, but I did not. We are all well and hope these few lines may find you all the same. We are getting along very well—have about sixty fine head of cattle all looking fine and doing well. I have some 17 or 18 acres of ground in corn, millet and garden. Everything looks fine here, much better than in some of the eastern counties, so those say who come in. I am better pleased with the country every day, it is hard to beat.

We have had quite an excitement among the settlers lately. The Pawnees were up here on a buffalo hunt and went on up the river to the mouth of the Frenchman's fork 30 miles above where they were attacked by the Sioux in a large body and all cut to pieces. There are so many conflicting reports it is hard to tell how many Pawnees were killed but I think some sixty squaws and perhaps as many bucks. Besides they lost about 100 ponies. This happened on last Tuesday, on Wednesday morning they came down past our place crying and howling fearfully. At the time the Sioux went for them they were on the move having their ponies loaded down with the dried meat of about 1000 Buffalo. They cut the straps and lost all, meat, blankets, everything. There were two white men with them, one of which the Sioux took prisoner and let him go again. The Pawnees fought for two hours like devils, but the Sioux surprised them and were too many, completely surrounding the Pawnees who finally had to make a charge and cut their way out. Since the fight there have been quite a number of Pawnees come down the road on foot and alone, having been wounded and hid in the grass until the Sioux were gone.

A company of soldiers came over from Cottonwood to the battlefield to take the Sioux back to their reserve and protect the settlers. Quite a number of the settlers saw the fight. They say they fought well.

We organized a Grange here yesterday with 21 members. Welborns are all into it. Have you joined? I think it a good thing. I will have to go to Lincoln to attend the meeting of the State Grange in December when I will come down and see you if possible.

The brother to whom this letter was addressed was George L. Berger, who now—1918—lives in Elmwood, Cass county, Nebraska, and the sister, Mrs. J. D. Ferguson, now living in Lincoln, Nebraska. They lived in Louisville, Nebraska, when the letter was sent to them.

THE TWO LAND COMPANIES

In a letter dated November 18, 1917, the secretary of the Lincoln Land Company, whose headquarters is now at Burlington, Iowa, informed me that D. N. Smith and the Republican Valley Land Association were joint owners with the Lincoln Land Company of about half a dozen towns in the Republican valley and that Mr. Smith was a

joint owner with the Lincoln company of the town of Culbertson and a part of the town site of Orleans. "The Republican Valley Land Association, whose interest we afterwards purchased, were equal owners with us in the towns of Arapahoe, Indianola, Bartley and Republican City, together with quite a body of farm lands at these different points."

So the Lincoln Land Company absorbed the Republican Valley Land Association.

DATA FROM THE RECORDS

Under date of November 9, 1917, Mr. John F. Cordeal wrote as follows:

I have searched the records of this county, at least so far as sections 16 and 17-3-28 are concerned, and can find no reference to the original entry of the town site. On June 4, 1890, George Leland, Emma Leland, J. D. Brown and Margaret Brown certified to the plat of East Red Willow, which was on the northeast quarter of 17-3-28. This plat was vacated March 16, 1896. On June 26, 1899, the town of Red Willow was platted on a part of the southwest quarter of section 16 and the southeast quarter of section 17-3-28 by the Lincoln Land Company. Mr. John Helm constructed a store building on one lot, but no other lots, so far as we are informed, were ever sold, and the land has at all times been used for farming purposes and has recently been acquired by Mr. John Helm, from his son, A. J. Helm, who purchased it from the Lincoln Land Company. The railroad company has a station named Red Willow, at which certain local trains stop when flagged. The railroad company also has two side or passing tracks at Red Willow station. The only business institution there is the elevator of the Farmers Equity Union, which, in addition to dealing in grain, sells fence posts, agricultural implements and, I believe, coal, salt, and at times, potatoes, apples, onions, etc.

In regard to your inquiry concerning the town site of Indianola, the original town site seems to have been entered under the homestead land laws by a number of different persons. Mr. E. S. Hill, who, by the way, was the first county judge of Red Willow county, and who still resides at Indianola, received a receiver's receipt for the southwest quarter of the northwest quarter and the west half of the southwest quarter of 7-3-27, and the southeast quarter of the northeast quarter of

12-3-28, on September 27, 1873, from the receiver of the United States land office at North Platte, Nebraska. On September 29, 1873, E. S. Hill and Delia S. Hill, his wife, conveyed the west half of the southwest quarter of 7-3-27, to D. N. Smith. This instrument was filed for record September 29, 1873, and is recorded in *Deed Record* 1, at page 11. The expressed consideration for the conveyance is \$400.

In November, 1873, the town of Indianola was surveyed and platted by M. Wilsie, surveyor. Dedication certificate is signed by D. N. Smith and Sophia Smith, and is dated November 29, 1873. The town of Indianola was originally platted on part of the west half of the southwest quarter of 7-3-27, and a part of section 18-3-27. December 4, 1873, D. N. Smith and Sophia Smith conveyed to Edgar S. Hill, by deed filed July 25, 1874, a number of lots and blocks in the town of Indianola. On November 18, 1874, the articles of incorporation of the Republican Valley Land Association were acknowledged in Lancaster county, Nebraska, by D. N. Smith, Amasa Cobb, Allen M. Ghost and Myron W. "Willsie."

On March 28, 1874, D. N. Smith and Sophia Smith, his wife, deeded a number of lots and blocks (apparently all that were not deeded to Edgar S. Hill) in the town of Indianola, to the Republican Valley Land Association. There seem to have been no conveyances made, at least in the early years of the county's history, of lots or blocks in Indianola to the railroad company. Subsequently, as I understand it, the Lincoln Land Company was organized, and the Republican Valley Land Association conveyed all of its holdings in Indianola to the Lincoln Land Company.

On November 20, Mr. Cordeal wrote as follows:

I have made an examination of the records in the office of the county clerk of this county so far as they pertain to the title to the original town site of Indianola, and find that on December 29, 1879, the Republican Valley Land Association sold to Albert E. Touzalin, trustee, for an express consideration of \$5,000, an undivided one-half interest in a number of lots and blocks in Indianola, and on the same day executed a power of attorney giving A. E. Touzalin authority to sell its interest, being an undivided one-half interest in all of its real estate in Harlan, Furnas, and Red Willow counties, and the town lots in Republican City, Orleans, Watson, Trenton, Arapahoe, and Indianola, as well as another town, the name of which I am unable to make out from the record.

On May 5, 1880, Albert E. Touzalin, trustee, conveyed his undivided one-half interest in a number of lots and blocks in

Indianola, for an express consideration of \$1 to the Lincoln Land Company. On May 31, 1898, pursuant to a decree of the district court of Harlan county, and in conformity thereto, The Republican Valley Land Association, for an expressed consideration of \$5,000, conveyed all its interest in all of its lots in Indianola and all its real estate wherever situated to the Lincoln Land Company. On May 27, 1880, the articles of incorporation of the Lincoln Land Company, dated March 7, 1880, and executed by Charles E. Perkins, A. E. Touzalin, Turner M. Marquet, G. W. Holdrege, J. D. MacFarland, W. W. Peet, and R. O. Phillips were filed in the office of the county clerk of Red Willow county.

A curious and interesting circumstance connected with the location of the county seat at Indianola on May 27, 1873, is that on that date D. N. Smith entered into an arrangement, or rather a bond in the sum of \$10,000, which seems to run to the voters of Red Willow county, by which he bound himself, in consideration of the location of the county seat of Red Willow county at Indianola, to erect a building to be used by the county, rent free, until such time as the commissioners should erect a courthouse, and to convey one hundred lots to Red Willow county when a courthouse was erected by the county commissioners from the proceeds arising from the sale of such lots to be used for the erection of such a courthouse.

Apparently in fulfilment of this agreement, the Republican Valley Land Association, on October 5, 1875, "for and in consideration of the location of the county seat at Indianola, Red Willow County, Nebraska," and the building of a courthouse at said Indianola, conveyed to Red Willow county a number of lots and blocks in that town.

It appears from the record of the instruments to which I have called attention, that instead of the Lincoln Land Company being the successor of the Republican Valley Land Association, the two companies may have been competitors in this line of investment in this part of Nebraska, as the incorporators of the two companies seem to have been different.

In November, 1917, the clerk of Red Willow county wrote: "There is nothing at Red Willow but a sidetrack and an elevator. No population."

FAMILY DATA FROM ROYAL BUCK'S DAUGHTER

On December 6, 1917, Mrs. Ada Buck Martin of Denver wrote the following account of the fortunes of her father's family:

Thankful P. Reed, daughter of John Reed of New York, and Submit Joiner of Deerfield, Mass., was born in Bainbridge, N. Y., January 11, 1830. She married Royal Buck in Fond du Lac, Wis., in 1853. The family removed to Nebraska City in 1860 and went to Red Willow, on the frontier, in 1872, and again to Branchville, Md., ten miles from Washington, D. C., in 1889, to settle the estate of Mrs. Buck's brother, Governor Amos Reed, which she had inherited.

Very soon after the death of Mr. Buck, in 1890, she removed to Washington, D. C., where she resided till 1904, when, her health beginning to fail, she moved to Denver, Col. Subsequently she spent four years in San Antonio and Abilene, Texas, but returned to Denver where she died, December 17, 1914, interment being at Indianola, Neb., in the family plot.

Amos Reed, Mrs. Buck's brother, was appointed by President Lincoln to be secretary of the territory of Utah, in the 60's. He made many journeys from Washington to Salt Lake City carrying money for the payment of the federal officers, under military escort west of the Missouri River. While in that office the governor of Utah died, and Secretary Reed was made acting governor. Returning later to his home near Washington among his political friends, the title clung to him.

Both Mr. and Mrs. Buck were of old Puritan stock, their later ancestors being active in the colonial and revolutionary wars. Some of Mrs. Buck's ancestors settled at Deerfield, Mass., where they were victims of early Indian raids.

One of the lineal male descendants of Mr. Buck's ancestors still owns the farm originally allotted to the first settlers of Weathersfield, Conn., and Mr. Buck's children treasure a white quartz arrowhead picked up on that farm.

My husband died several years ago, and I resumed my maiden name in part. My brother, Amos Reed Buck, lives in Portland, Oregon. His family consists of his wife and three young sons: Royal, Amos Reed Buck, Jr., and Mahlon. My father was an editor in his early life, in Wisconsin and in Nebraska City. In the latter place he took charge of a paper in order to let the owner enlist in the Civil War. That he fought bravely and fearlessly with his pen is proved by the fact that more than once armed guerrillas came to the house in the night, trying to entice him outside on one pretext or another.

In the middle 80's, before her marriage, Mrs. Martin was a teacher in the Park school, Lincoln. Her uncle, Amos Reed, was appointed secretary, and James Duane Doty of Wisconsin, governor of Utah in June, 1863. Governor Doty died in June, 1865, and Secretary Reed then

became acting governor until the arrival of Doty's successor. Royal Buck was buried beside his brother-in-law, at Beltsville, near Branchville, Prince Georges county, Md.

RECOLLECTIONS OF EDGAR S. HILL

On December 20, 1917, Edgar S. Hill sent, from Indianola, Nebraska, the following recollections of the early settlement of Red Willow county. Mr. Hill laid out the Hillsdale in Mills county, Iowa, mentioned in his story:

The statements made to you by Mr. Usher and Mr. Cordeal are substantially correct and need no further explanation. The Hillsdale in Mills county, Iowa, is the one referred to by Mr. Usher. The site was located on the then line of the C. B. & Q. railroad, between Malvern and Glenwood; but on account of longer distance and heavier grade between points a section of the roadbed was moved about two miles north, and the abandonment of Hillsdale resulted.

You are aware of the Buck party's trip up the Republican valley in the winter of 1871, of their camping for three days at the mouth of Red Willow Creek and return to Nebraska City, at which time they fixed the date of their settlement. In the spring of 1872 G. A. Hunter, myself, L. B. Korn and William Weygint and son made a trip up the Republican valley, arriving at Red Willow Creek on the last day of April, from which time we date our settlement. We had an outfit of three teams and wagons, with farming tools, seed wheat, corn and potatoes, with the intention of making a settlement if good locations were found.

After prospecting the country for several days we concluded to locate claims—I, on the land on which the city of Indianola now stands.

We all did some plowing on our claims, and I sowed half a bushel of wheat on sod ground which matured a good crop of spring wheat. It was harvested with a scythe and threshed with a flail. A sample which D. N. Smith sent in a shot bag to the Chicago Board of Trade was pronounced No. 1. After a short stay here Hunter, Korn, and Weygint returned to Iowa, leaving me to look after our claims till they should return. There being no land office having jurisdiction over that part of Nebraska, I waited until the land office was opened at Lowell, on August 12, when I filed my claim. I was one of the first to register. Then I went back to Iowa and with my wife and son returned early in September to my claim, where I have resided continuously ever since. I mention these facts in

part proof of my claim of being the first bona fide settler in the county—now a resident here—if one of the Buck party who was here with him in 1871 is not entitled to that distinction by reason of being one of Buck's party. But enough of this.

Royal Buck and family arrived here about three weeks after the arrival of our party, as I remember the incident. Mr. Buck carried on farming while he lived here. Mrs. Buck, as is understood here, received an inheritance of land adjacent to Washington, D. C., from a bachelor brother. This is all I know about the matter, as very little was ever said about it by the Bucks. Mrs. Buck died about three years ago, in Denver, and was buried here in the Indianola cemetery by her daughter Ada and son Amos, now residing in Denver. I am not aware that Buck and party ever laid out or platted a town site at the mouth of Red Willow Creek. John F. Helm employed me as county surveyor to plat and lay out a town site on a claim he had near the mouth of the Willow, which I did while Buck lived here. Afterward a blacksmith shop was erected on the site and I think one or two other buildings, which was all the town ever amounted to, and these were soon abandoned and moved away, and the matter was soon forgotten. Buck never had anything to do with it. There never have been, and are not now half a dozen buildings of any kind on the land known as Red Willow. The Burlington railroad company has a siding at this point, and the Farmers Equity Union have a grain elevator doing business there now.

I first became acquainted with D. N. Smith in Iowa, about the year 1869 or 1870. He was then, as I remember, locating agent for the C. B. & Q. railroad company and the B. & M. in Nebraska.¹⁵ I next met him in 1872 on my claim here.

The story of the early settlement of Red Willow county would be an interesting one and worthy an abler pen than mine. If I live until the 23d day of January next I will have arrived at the eighty-fourth mile stone of my life—a long time to remember the noteworthy events which have occurred during this time.

In response to further inquiry, on December 31, 1917, Mr. Hill wrote the following additional particulars about the beginning of Indianola:

Mr. Weygint died recently at the home of his daughter, Mrs. I. J. Starbuck, in Salt Lake City, aged ninety-seven years.

¹⁵ The correct name of the company was Burlington & Missouri River Railroad Company in Nebraska. It was absorbed by the Chicago Burlington & Quincy Railroad Company.

His wife, at last accounts, was living at the same place, age ninety-five years.

I cannot give a positive statement of the affair called a trial of Red Willow vs. Indianola in the district court of Furnas county. This trial was an appeal from the decision in County Judge Colvin's court¹⁶ giving Red Willow the county seat. We employed Attorney-General Roberts to represent our case in district court. On trial day Roberts was on hand, also I. J. Starbuck our local attorney, G. A. Hunter, sheriff-elect, myself and several others whom I do not remember. The Red Willow party failing to appear by attorney or otherwise, we adjourned and went home. This ended the so-called trial of the controversy between Indianola and Red Willow. John F. Helm was the party who employed me to lay out "a town site" at the mouth of the Red Willow on his own land. Royal Buck had nothing to do with this matter nor with the laying out of a town site anywhere else, according to the best of my knowledge.

My acquaintance with D. N. Smith began in Iowa in connection with the town site of Hillsdale, in Mills county. I think he was then in the employ of the Burlington & Missouri Railroad Company in Nebraska. At that time I knew nothing about the Republican Valley Land Association or the Lincoln Land Company. I next met Mr. Smith some time early in July, 1872, on my claim where Indianola is now situated. The meeting was a mutual surprise, as neither of us knew of the other's whereabouts. After a short talk he wanted to know what I was doing here. I told him I was trying to hold down this land as a claim until the land office would open at Lowell on the 12th of August, when I could file on my claim. He then told me that he was prospecting for a location for a town site on which he believed the county seat of Red Willow county could be located. He had just come down from the mouth of the Willow, where he found the Buck party—or as many of them as were there—quarreling over where they could locate a town site for the same purpose, each one wanting it on his claim. He said he could do nothing with them, so he came on down the river until he met me. I asked him what was the matter with my claim for that purpose. He replied, "That's so." After looking it over he said it was just the place he was looking for but we would have to have deeded land for that purpose. I had a soldier's right and could obtain title by living on land for two years; but that would be too long to wait. I wanted him to wait until the land office opened, when I could

¹⁶ There was the office of probate judge but not of county judge at that time. Mr. Colvin was justice of the peace.

pay out and then go ahead; which I did. I afterward sold Smith eighty acres of my claim for \$200 with the understanding that he would lay out the town and put up three good frame buildings, one for a hotel, another which we would give the use of to the county for a courthouse, and the other for a store building, and deed me back a fourth of the lots. This was only a talk between us, no papers ever having been passed. This was the plan, provided the election went our way, which it did; and the agreement was faithfully carried out as already stated.

That is the story, related to you in a conversational way, of the location of the town of Indianola on my homestead as far as myself and D. N. Smith were concerned. I always found Mr. D. N. Smith to be a man of his word and a gentleman in every respect.

I have just come across volume XVIII of your publications, from which I have learned more of their object than I have ever known before, and I have no objections to the publication of any information I may have given and only regret that I could not have put it in a more readable way than I have been able to do.

George L. Berger and J. B. Kilgore, his father-in-law, left Cass county on October 28, 1873, with a team of horses and a lumber wagon. They drove to Indianola in Red Willow county to visit Mr. Berger's brothers, William H. and Joseph E. They arrived at Indianola on November 4. Mr. Kilgore took an additional soldier's claim in Red Willow county and removed his family there in April, 1874. A few days later the Berger brothers, Kilgore, Frank Welborn, John Welborn, Jesse Welborn, James Sweeney, and Charles Hayes, constituting the party, went on a buffalo hunt. The Welborn boys and the Berger boys, with the exception of George L. Berger, were residents of Red Willow county. The rest of the party lived in Cass county.

After getting all the buffalo meat they needed, it was packed with salt in barrels. On November 13 they were about ready to return home when Sweeney and Hayes came into camp and told of finding a battle-ground with many dead Indians, dogs and horses lying on it. The battle—between Pawnee and Sioux—was fought in a wide

place in a cañon about three acres in extent, between the Frenchman and Republican rivers. The party had much difficulty in getting down into the cañon, but finally found a place where they could drive through. They locked the wheels of the wagons and went down one at a time. They went over the ground carefully. It was strewn with buffalo meat which the Pawnee had dried. They had been camping in the cañon for some time, and according to the story told to Mr. Berger by the agent of the Pawnee there were two white men from the east in the Pawnee camp. They were taken prisoners by the Sioux. Later a detachment of soldiers chased the Sioux, and they released the agent and the two eastern white men. The agent told Mr. Berger that the Pawnee had been upon their hunt and had procured the best meat of about one hundred buffaloes. The Sioux surprised the Pawnee by covering themselves with buffalo robes and marching toward the camp. Although the Pawnee had secured their winter meat, on the morning of August 5 many of their men pursued a herd of buffaloes so as to have fresh meat as they traveled. When they came nearer the Sioux threw off their buffalo robes, jumped to their feet and began shooting. The Pawnee were demoralized, and the entire band dropped everything and fled. The agent said that he tried to get them to stop and make a stand, but they were too frightened. Everyone killed was shot from behind with a forty-five calibre gun. Mr. Berger described an impressive incident of the battle. Rain had washed deep pockets on the west side of the cañon; and in one of them an entire family, consisting of a man, a woman, and five small children, were lying dead. Mr. Berger counted in all the bodies of sixty-five Indians although the agent told him there were over one hundred and twenty-five killed. Some died along the road and some after they returned home. Though the battle occurred on August 5, on November 13 the bodies were still well preserved.

After exploring the battle-ground, Mr. Berger and his

party followed the cañon south to its confluence with the Republican valley and then traveled east to the site now occupied by Culbertson where they camped for the night. The next day, November 14, the party arrived at W. H. Berger's home in Red Willow county. After visiting here for a few days, George L. Berger and Mr. Kilgore returned home and arrived in Cass county about December 1.

Mr. George L. Berger, having been informed that there is reliable evidence that the bodies were buried by a detachment of soldiers from Fort McPherson on August 24, 1873, in a letter written January 26, 1918, again insisted that his party found them unburied on November 13, 1873. It seems probable that the first interment was very shallow, so that after the bodies had become mummified in the dry atmosphere they were exposed by wind and rain. Mr. Berger's letter, in part, follows:

On November the 13th, 1873, when our party were there, the bodies of dead Indians were laying on the ground just as they were killed. They were not decomposed; they were in good state of preservation, considering the heat and the time they had laid on the ground. The flesh had just dried and shrunken. There was no bad stink, just a little musty odor. In walking across the space where the bodies were laying, not to exceed three acres, I counted 65 dead Indians, but there were 125 killed in all.

As to when these bodies were buried, the historian you speak of is absolutely mistaken. I have not got the exact date but positively it was April or May, 1874. They positively laid on the ground where they were killed all fall and winter. When I started on this trip I left my home, section 29, township 12, range 11, Louisville precinct, Cass Co., Nebr., on October the 28th, 1873, and got back just before Christmas.

THE TRUE LOGAN FONTENELLE

BY MELVIN RANDOLPH GILMORE

Curator of the State Historical Society of North Dakota

Not long ago accounts were published of the presentation of a portrait and the placing of a tablet to the memory of Logan Fontenelle in the Fontenelle Hotel, Omaha. The spirit which prompts the commemoration of historic persons and events is commendable; but the exercise of this praiseworthy spirit should, of course, be governed by intelligence and devotion to truth. The posthumous honor of an historical personage is not enhanced but rather suffers detraction by inaccurate or wholly false setting.

Logan Fontenelle is of considerable historical importance by virtue of his position as a go-between for the two races; for in 1854 when seven chiefs of the Omaha tribe went to Washington to make the treaty of cession of their lands to the United States they took him with them as their interpreter. It appears that Louis Sanssouci was the official department interpreter at that time, but the chiefs took Logan Fontenelle with them as their own interpreter.

It is a pity that those who are disposed to commemorate the name of Fontenelle ignore the real service he did perform in the negotiation of the notable treaty of 1854 by which the United States acquired all that part of what is now Nebraska from the Missouri River to the Sand-hills and from the Niobrara to the Platte, while they claim for him a work he did not perform and a place which in fact he did not hold. Members of the Omaha tribe who were contemporaries of Logan Fontenelle and familiarly acquainted with him have told me that he never was a chief, constituted and inducted according to the ancient laws and usages of their nation. They say that they have heard

that it is commonly reported and believed among the white people that he was a chief of the Omaha, but they say it is not true and they cannot account for the story current among the white people. And this assertion by present living persons of the Omaha tribe who knew him all his life is in accordance with other accounts left on record by contemporaries and fellow tribesmen of his who died years ago.

In *Contributions to North American Ethnology* (VI, 458), there is a narrative by Two Crows of a war expedition in which he took part against the Yankton Dakota in 1854. In this narrative he refers to the departure of the chiefs to Washington "to sell land" and states that Louis Sanssouci and Logan Fontenelle went along as interpreters. In the same volume there is a narrative by John Bigelk of an attack by the Dakota on the Omaha near Beaver Creek, north of the Loup River, during the summer buffalo hunt of 1855. This Bigelk was an elder in the Omaha Mission Church and a nephew of the Big Elk mentioned by Long and other explorers. Near the end of the narrative (p. 464) he refers to the killing of Logan Fontenelle thus: "They killed the white man, the interpreter, who was with us." He calls Fontenelle a white man because he had a white father. This was a common designation of half-breeds by full-bloods, just as a mulatto might commonly be called a "nigger" by white people, although as much white as black by race.

In the *United States Statutes at Large* (X, 1046), the following names appear as signatures of the treaty: Logan Fontenelle, Joseph La Flesche, Standing Hawk, Little Chief, Village Maker, Noise, Yellow Smoke. These seven signatories are designated in the instrument as "Omaha Chiefs". I have asked old men of the Omaha tribe to name for me the chiefs who went to Washington to make the treaty in 1854. In answer they have given me the following names: Two Grizzly Bears, Joseph La Flesche, Stand-

ing Hawk, Little Chief, Village Maker, Noise, Yellow Smoke. It will be seen that the name Two Grizzly Bears in this list does not appear in the official list of signers of the treaty. The other six names are the same as those appended to the treaty. Again, in Two Crows' account of his war party of 1854 he mentions Two Grizzly Bears as one of the chiefs about to go to Washington "to sell land." Thus a discrepancy appears between the list of signers of the treaty given in the statutes and the list as always given by Omaha of their chiefs who went to Washington "to sell land." Perhaps that discrepancy is explained by the following statements. It is said that when the delegation appeared in Washington, Logan Fontenelle being with them but not accounted for to Manypenny, commissioner of Indian affairs, he asked who this man was and what he was doing there, and Two Grizzly Bears answered for him and said "I brought him here to interpret for me." So the commissioner was satisfied. This may well be the reason why the name of Logan Fontenelle appears on the treaty instead of that of Chief Two Grizzly Bears. Thus it would seem that Fontenelle in playing Aaron to Two Grizzly Bears Moses has had appropriated to himself whatever fame and honor should properly pertain to the latter, while his own proper place and honor have been entirely neglected by those who in this day purpose to commemorate his public service.

I have stated before that the living members of the Omaha tribe who by personal knowledge are qualified to answer the question uniformly say that Logan Fontenelle was never a chief. I have also shown that after the death of Fontenelle he was spoken of by Two Crows as "the white man, interpreter", and not as a chief. And if one knows anything about the social, political and governmental organization of the Omaha tribe he will see at once, on exercising the slightest degree of thought, that it must be true that he could not be a chief. The Omaha tribal organization consisted of two half tribes; and each of these half

tribes comprised five subdivisions or gentes. Each gens had its own duties and privileges in the tribe. The gentes of one half tribe shared among them the rituals pertaining to matters connected with the earth and earthy elements, while the gentes of the other half tribe were the keepers of the rituals pertaining to the sky and the upper world, the winds, clouds, rain, lightning, and all things above the earth's surface. Each gens had its chief and each of the two half tribes had its head chief, thus holding the tribe, while fully functioning together, in harmony with the greater and lesser powers of the earth and heaven. For the proper balance and harmony of tribal functions, official place, and duties thereto pertaining, were constitutionally hereditary. Man and wife were never of the same gens, and children belonged to the gens of the father. Sons succeeded to the duties and station of their fathers. Hence it plainly follows that the children of a white man have no proper place in the tribe to which their mother may belong, unless they or their father have been adopted into the tribe and given a place in some gens. Otherwise they stand outside the scheme of things in the tribal constitution. Logan Fontenelle was a half-breed, the son of a white man. That is the reason Two Crows, in the quotation cited above, refers to him as a "white man."

But, it may be asked, was there no way by which a white man or a white man's half-breed son could attain to a place under the tribal constitution? Yes, there was a way; that was by adoption. Under the Omaha law a son by adoption acquired all the privileges, duties and responsibilities of a son by generation. Captives from other tribes at war were many times adopted to take the place of sons lost by death. Other considerations, as affection or expediency, sometimes procured adoption. But Logan Fontenelle was never adopted into any Omaha family. All his life he remained the son of his father, Lucien Fontenelle, a Frenchman. And no one has ever claimed that he was ever counted out of his father's family.

But there is one notable instance of the adoption of a half-breed into the status of a member of a gens of the Omaha tribe with all the rights and duties thereto pertaining. That was the case of Joseph La Flesche, whose tribal name was Iron Eye. He was a Ponca half-breed, the son of a Frenchman by the name of Joseph La Flesche who married into the Ponca tribe where he was stationed in the fur trade. This Ponca half-breed was adopted by Big Elk, chief of the Wezhinshte gens of the Omaha tribe. This Big Elk was the one mentioned by Long and other travelers. The adoption of young Joseph La Flesche by Big Elk gave him by Omaha law a status such as he would have had if he had been born in that family, and in the course of time and by due process of law the young Joseph La Flesche, after the death of his adopted father, Big Elk, succeeded to his place as chief of the Wezhinshte gens.

But it has never been claimed, nor would it be true to say, that such a process was followed in the case of Logan Fontenelle. It is not even claimed that any Indian, any member of the Omaha tribe, ever adopted him. He always remained in the status of a son of his own father, a white man.

So it cannot be maintained that Logan Fontenelle was a chief of the Omaha tribe, but it is sufficient to give to him the proper honor due him for his service as an intermediary for both races whose blood flowed in his veins. It is much better to commemorate his name for the important place which really was his than to try to build up a fictitious place which cannot be logically or historically maintained.

In explanation of the appearance of the name of Logan Fontenelle as a chief signatory to the treaty of 1854 it may be said that he was the only member of the delegation who could read or write. None of the others could know the nature of the instrument nor how the witness of their names was actually attached to it. Also the United States

officers, the commissioner and others, were ignorant and indifferent to the constitution and laws of the Omaha tribe. They did not know nor care about these things; their only concern and care was for the formality of concluding the treaty.

NOTE BY THE EDITOR

With the scholar's sensitiveness touching congruity and historical consistency and truth, Mr. Gilmore was offended at the investiture of Logan Fontenelle by white men with a tribal relation and character which he was convinced the young half-breed did not and could not have. Always there have been races or nations endeavoring to subjugate other races or nations for their own uses. Unfortunately, such has been a rule and road of progress, and it has been an incident of this purpose to propitiate likely leaders of the subjugated people with honors and emoluments. The white subjugators from the first played off this trick of diplomacy upon the Indians. Thus the journal of the Lewis and Clark expedition informs us that at the Council Bluff "Captain Lewis and Captain Clarke held a council with the Indians, who appeared well pleased with the change of government, and what had been done for them. Six of them were made chiefs, three Otos and three Missouris."

I found in the *Daily Missouri Republican* of November 23, 1851, an account of the making of a chief for "the Sioux Nation" at the council between eight tribes of Dakota and Colonel D. D. Mitchell, superintendent of Indian Affairs at St. Louis as special commissioner, which began September 18, 1851, and continued eighteen days. The commissioner nominated Frightening Bear for the office, and then the band ratified the choice, their ballots consisting of sections of twigs. Colonel A. B. Chambers, long time editor of the *Republican*, was secretary of the council, and in the report of its proceedings to his newspaper he said that the Indians could not agree upon a chief among themselves. Lieutenant G. K. Warren in *Explorations in Nebraska and Dakota* speaks of "Matdiya (Scattering Bear), made chief of all the Dakotas by Colonel Mitchell of the Indian Bureau, and who was killed by Lieutenant Grattan"—which led to the famous Grattan massacre near Fort Laramie on August 19, 1854. "Frightening" and "Scattering", though differing, are nearly equivalent translations of the Indian name. To frighten is commonly to scatter.

J. Owen Dorsey in his *Omaha Sociology* observes that

Some chiefs have been appointed by the United States Government, and so have been recognized as chiefs by the United States agent in his

councils with the tribe; but these are distinct from the regular chiefs. In 1878 the writer found three of this kind of chiefs among the Omahas. They had been appointed by the United States about the year 1869.—*Third Annual Report of the Bureau of Ethnology*, p. 358.

In the "comprehensive monograph of the Omaha tribe," which occupies nearly all of volume XXVII of the report of the Bureau of American Ethnology, the dispute as to whether Logan Fontenelle was a chief or not is accounted for.

Contact with the traders had a disturbing influence on the politics of the tribe. The traders lent aid to those chiefs and leading men who favored schemes for barter, and these Indians used the favors shown them to enhance their own importance in the tribe. The following narrative, compiled from stories told by old men of the tribe, illustrates this state of affairs:

The great-grandfather of a chief who was living twenty-five years ago visited the trading post at St. Louis, and on his return assumed an air of importance, saying that he had been made a great chief by the white men. He began to appoint "soldiers" and ambitious men sought his favor. He made Blackbird a "soldier" and took him to St. Louis. (This was the Blackbird the apocryphal story of whose burial on horseback on the bluffs of the Missouri is told by Lewis and Clark.) Blackbird was a handsome man and the white people made much of him, showing him more attention than they did his companion. When Blackbird returned to the tribe he declared he had been made a chief by the white people. Blackbird was an ambitious man, who loved power and was unscrupulous as to how he obtained it. The traders found him a pliant tool. They fostered his ambitions, supplied him with goods and reaped a harvest in trade . . . The romantic picture of his interment on horseback must be credited to grateful traders, as must also be the bestowal of his name on the hills and creek where later the Omaha built a village when they moved to their present reservation. It is a fact that horses were frequently strangled at funerals and their bodies left near the burial mound, which was always on a hill or at some elevation, but they were never buried alive or interred with the body. It is one of the humors of Indian history that a relic hunter should have picked up a horse's skull on one of the Blackbird hills and preserved it in a museum in memory of this fanciful entombment . . .

The interference of the traders, and later of Government officials, in tribal affairs, caused two classes of chiefs to be recognized—those whose office was due to white influence and those who were chiefs according to tribal right and custom. The first were designated "paper chiefs", because they usually had some written document setting forth their claim to the office; the second class were known simply as "chiefs." This conflict in authority as to the making of chiefs was a potent factor in the disintegration of the ancient tribal life."

Logan Fontenelle does not appear among the names of Omaha chiefs in the reports of the Bureau of American Ethnology. Regarded as an Indian, he was not a chief, and he seems to have evinced no qualities by which Indians are held to be distinguished either among Indians themselves or among whites. He was a good fellow, with the full habits of his kind; and he seems to have been a useful intermediary between the

constantly clashing races whose mixed blood vexed his veins. Owing to his youth, the short term of his chieftainship—about two years—and the weakened, dispirited condition of the tribe, it would have been surprising if he had manifested unusual, much less heroic mettle. Much stronger qualities than he possessed might have remained undiscovered and undeveloped in that prosaic and otherwise unpropitious environment. The very circumstances of his death preclude his glorification or idealization as an Indian. No true Indian would have been caught so ingloriously napping by so ubiquitous and always to be expected a foe.

It is this baseless, untrue idealization, I take it, which Mr. Gilmore deprecates in adverting to the Omaha incident. The greatest of the three Omaha chiefs called Big Elk was truly a chief, by, for, and of the tribe itself, and was truly an Indian with a character and prestige fit for commemoration or idealization. The other two also possessed such distinguished qualities though not as pronounced. The name, too, would have been far more striking and distinguishing than Fontenelle, though not so attractive otherwise.

When riper knowledge and taste demand that the picture of Fontenelle shall be realistically and historically true, it might be made over with a few bold strokes of the brush to represent Lucien, Logan's French father. He was a very prominent figure in the fur trade of our plains, and to accommodate that important business he—with Andrew Drips—erected the first fairly permanent business building in Nebraska—at Bellevue. Furthermore, his career is flavored with a real romance; for he possessed the superior merit of high birth and social status and the moral courage to flout them. Such a transfer would turn historical caricature into historical truth and justify the retention and perpetuation of a pretty name.

A statement of the case for Logan Fontenelle, for publication herewith, was solicited from a member of his family, but the reply was confined to a stout assertion that status in the tribe descended through the female, as well as the male line.

AT BELLEVUE IN THE THIRTIES

BY MRS. E. ANDERSON

¹ The next most noted men that lived at Bellevue were the Pawnee missionaries. They were Old School Presbyterians—Mr. Dunbar and wife and Mr. Allis and wife. They never went farther west that I know of—not during our stay at Bellevue, at least. All I can say about them is they were Christian gentlemen and ladies.² Mr. Curtis was sent by the Baptist Board of Missions to preach to the Omaha Indians. He moved from Bellevue to the village, but the Indians became insulting and made hostile demonstrations. Mr. Curtis wrote back east to know what he should do. They wrote to him to trust to the Lord and stay where he was. He wrote back to them that the Lord did not work miracles in these days and he was a going to leave. He came back to Bellevue and baptized the first person that was ever baptized in the Nebraska River. It took place near the Otoe village. The candidate for baptism was a black woman that belonged to Mr. Merrill. It was a beautiful Sabbath day and was a romantic sight to see a nation of wild Indians gathered together to witness the solemn rite of Christian baptism. Mr. Merrill gave a long talk to the Indians and Uncle Robert Dougherty was interpreter.³

¹ The first page of Mrs. Anderson's interesting story is unaccountably missing, so that whom she appraised as the most noted men of Bellevue may only be conjectured.—Ed.

² These missionaries, Rev. John Dunbar and Samuel Allis, resided with the Pawnee at their villages on the Platte and the Loup rivers. See Dunbar, "Missionary Life Among the Pawnee", Nebraska State Historical Society, *Collections*, XVI, 268; Allis, "Forty Years Among the Indians and on the Eastern Borders of Nebraska", *ibid.*, *Transactions and Reports*, II, 133; "The Pawnee Missionaries", *The Christian Keepsake* (1839), p. 25.—Ed.

³ Samuel Allis gives some account of the experience of Rev. Samuel

Doctor Saterlee was sent by the Presbyterian Board to act as doctor and surgeon. At the Pawnee mission his wife died, and he went on alone. He never reached there. His fate is unknown. They found on the bank of Nebraska River some torn paper and human hair that they thought was his; but they did not know, as it was so defaced they could not tell.⁴

A sad ending of two human lives in those young days during our stay at Bellevue.

I saw Kit Carson. He stayed but a short time at the fort. He was on his way from Saint Louis to Santa Fe. He was a well formed man but rather undersized and was dressed in buckskin. There was a great deal of romance and fiction interwoven in the life of Kit Carson, that he never thought of. I never saw him but once. There was a Mr. Fontenelle that had a trading post a half mile south of Bellevue. His two little boys, Logan and Tecumseh, were attending school in Bellevue. Their mother was a Sioux woman, and their father was a Frenchman. He was well educated and appeared to be much of a gentleman; but in an evil hour he listened to bad advice. They told him if he would take an Indian wife he would have better success trading with the Indians, and when he wanted to leave there he could leave her with her people. He lived with her until their first child was born. He said he could not desert his child. He stayed amongst the Sioux Indians until they had two children. He left them and came to Bellevue. There was a sore trial in wait for him at Bellevue. One morning, shortly after school was called, the two Fontenelle brothers were conning over their lessons, when the mother and a negro man dashed to the door and caught the little boys in their arms and ran out at the

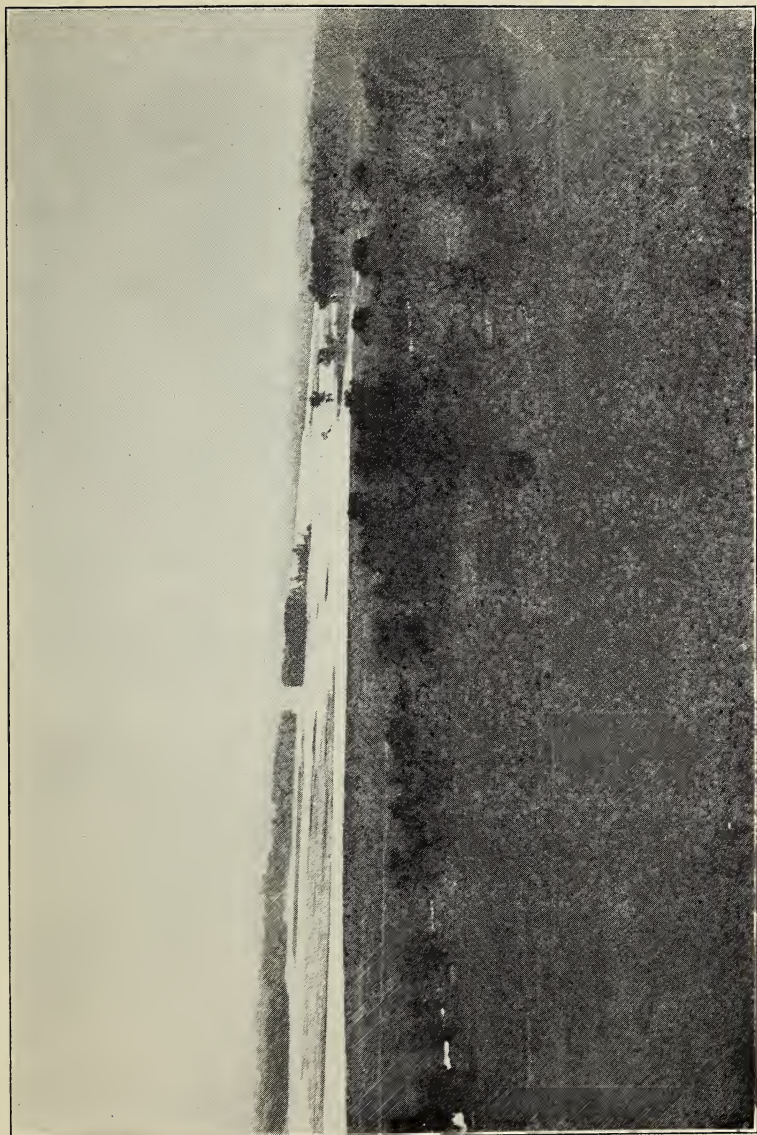
Curtis as a missionary to the Omaha in his history named in the preceding footnote, page 150. Rev. Moses Merrill, missionary to the Oto and Missouri.—Ed.

⁴ See an account of the Dr. Benedict Saterlee tragedy, by Rev. John Dunbar, *The Christian Keepsake*, p. 51.—Ed.

southwest corner of the fort across the bluffs to the trading post. And the news in the fort was that Fontenelle's wife was killed by an Iowa Indian who was in the fort. There were a great many Iowa Indians there at that time; and they were for getting away from there in a hurry.

In a short time they found it was right to the reverse. The woman had killed the man. The men ran out at the southeast corner of the fort; ran down the river road to the trading post; but she got there first. She and the children were locked up in the upper story. That night Mr. Fontenelle put her and her two children aboard of a boat and sent them up the river to her people. She came back the next summer. While up there a little girl was added to the family. Her name was Mary. The oldest boy had the features of his father and genteel deportment, but the complexion and color of his hair was like his mother. The younger brother had the complexion of his father but the features of his mother. The little girl was an Indian in full—their mother said the reason she killed the Indian was that he joined a war party of Iowa and killed all of her father's family after taking him in and keeping him all winter and showing him a great deal of kindness. He did his mischief on his return home. In the spring she found he was in the fort, and she enticed him into the southeast corner of the house with whisky, and he sat down in a drunken stupor, when she stepped up behind him and cleft his skull with an ax. The thought of his children being half Indian preyed so on Mr. Fontenelle's mind that he died the death of a suicide, a sad ending of what might of been a noble life.⁵ But we should imitate his virtues and shun his vices and let his name rest in peace.

⁵ Lucien Fontenelle was doubtless a highborn Frenchman, who preferred the freedom of the frontier to the conventional society of New Orleans in which his family moved. Accordingly, at the age of fifteen or sixteen, he ran away to St. Louis and soon engaged in the Rocky Mountain fur trade. He was married to a daughter of Big Elk, a famous chief of the Omaha, and four children were born to them. According to the best accounts intemperance caused his death. See



SITE OF OLD OTO AND MISSOURI INDIAN VILLAGE

The small stream in middleground is Otoe Creek. Photographed by A. E. Sheldon, July 1912.

Major Dougherty⁶ came up every spring and issued annuities to the Indians. He always brought a small body of dragoons with him, but they never remained longer than a few days. The Indians met him at Fort Bellevue with their head chief, Iatan,⁷ who was one of the noblest Indians I ever saw. He was a true friend to the whites, and it finally cost him his life. Major Dougherty distributed annuities on the public square of Bellevue. It was a dry time, and the wind blew pretty hard. I could gather up all the beads I wanted of all sizes and colors.

The Indians picked a quarrel with Iatan by one of their number stealing his favorite wife. She was young and handsome and was greatly beloved by the old chief. It was death by the law of the nation for a woman to desert her husband, but a chief could spare her life if he chose to do so. She was gone some time but her condition was such she had to come back. Mr. Merrill went to the village to intercede for her life. Iatan promised to spare her life but would take the life of the child. Mr. Merrill went to

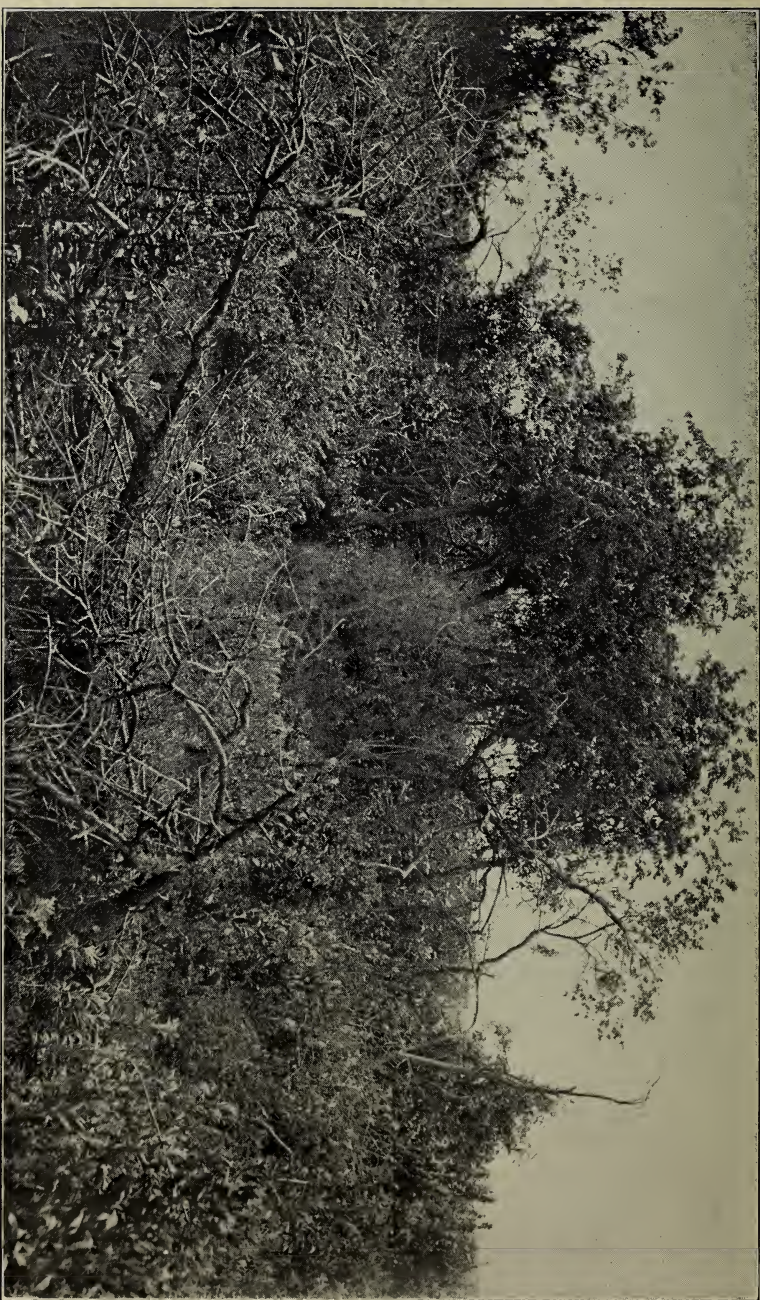
Chittenden, *History of the American Fur Trade*, p. 391; *ibid.*, *Life Letters and Travels of Father De Smet*, pp. 1532, 1550; Nebraska State Historical Society, *Transactions and Reports*, I, 91; *ibid.*, II, 164.

⁶ John Dougherty, agent of the Omaha, Oto and Missouri, and Pawnee. The general headquarters of the agency at this time was at Fort Leavenworth. Mr. Dougherty's home was at Liberty, Missouri, and he was a man of considerable prominence in that state.—Ed.

⁷ A chief of the Oto and Missouri. His name is commonly spelled Itan and sometimes Jutan. Yutan, a station on the division of the Union Pacific railroad from Valley to Beatrice, was named after this chief. The Oto village was situated about a mile and a half southeast of Yutan until 1835 when it was moved farther down the Platte to a place six or seven miles south of Bellevue. The expedition of Colonel Henry Dodge up the Platte, in 1835, held a council with Itan and his headmen at the old village. The Journal of the expedition gives a sketch of Itan, and in *Transactions and Reports of the Nebraska State Historical Society*, V, 210, Rev. S. P. Merrill describes his characteristics. It is surprising that this distinguished chief is not mentioned in the *Handbook of American Indians* published by the Bureau of Ethnology.—Ed.

the village when he heard of her confinement to beg Iatan to spare the life of the child. When he got there he did not have any trouble on that account. The child was born with a full set of teeth. Iatan said that it was born into the world for some wise purpose, and he would spare its life. Iatan told my mother, a month before he was killed, that his tribe would kill him. He said it was because he was a friend to the whites, and that he would sell his life as dear as possible. As soon as the woman got able to travel she ran away again with the same young chief. They stayed out over two months.

One morning Iatan was eating his breakfast at the Baptist Mission, when his nephew came in and told him that the young chief had come in for a fight. He told him to go back and tell them that he would be there when he ate his breakfast. When he was through eating he saw that his firearms were all right. He bid Mr. Merrill and wife farewell. He said he had eaten his last meal and they would never see him again. With a sad heart they bade him goodbye. His rival marshaled his men on one side, and what of the tribe remained true to Iatan rallied around him and the fight began. There were several killed on both sides. Iatan and his rival were killed. Iatan had six balls fired into his body before he fell. Every one that struck him he would spring up in the air and give a yell of defiance. He lived three hours after he fell. The last shot he received was from the gun of his rival. Iatan gave him his death wound. In dying he tightened his finger on the trigger and shot Iatan as he fell. The death of Iatan was the death blow to the Otoe nation. He was brave and honest and had great respect for Major Dougherty. When he would meet the major at Bellevue he always wore a suit of military clothes and a hat with two heavy black plumes tipped with red and a large silver medal on his breast. The little lap of earth that contains his bones is near the old Otoe village a half mile north of the Nebraska River. His memory is perpetuated by naming a railroad



CONJECTURED SITE OF CHIEF IATAN'S COUNCIL LODGE
The largest earth circle in the village. Photographed by A. E. Sheldon, July 1912

station for him in Platte county, Missouri. Peace be to his ashes.

The crier of the village was killed, and the nation showed ingratitude to a man that had worn himself almost out in their service by killing him and leaving him unburied. Iatan's nephew came to my father after the fight was over for protection. Father told him he would gladly do so if it was in his power. He had no place to hide him. Mother told him if his enemy found him there they would kill all of us. He said he would fight until he was killed, but that would not save us. He concealed himself in the woods until dark when he stole back to the mission. They hid him in the cellar. I understood after we left there that he was killed. I witnessed the burial of one of the young chiefs. After the body was lowered into the grave they killed his favorite horse and left him by the grave. Father asked them why they did such a thing—it seemed so cruel. They said that was done in order that the chief's spirit might ride the horse's spirit in the happy hunting ground. After the death of Iatan there were no chiefs of respectability left. There was Little Rabbit and Young Crow, but they were bad Indians. When the tribe would go on a buffalo hunt in the fall they and a few of their braves would stay at the village for the purpose of thieving and live by plundering. The men did the hunting and the fighting, and the women did the work. I have seen an Indian woman walking under such a load that she was almost bent to the ground, her husband walking at his leisure behind her. When he is in a good humor he will be humming a love tune of the long ago when he wooed and won the dusky maid that walked before him. They go through a form of courtship, but they have to buy their wives. They all practiced polygamy. The number of wives depended on the number of ponies the man had. I suppose the wild Indians of the plains are the same in their habits that they were sixty years ago.

SWEDES IN NEBRASKA¹

BY JOSEPH ALEXIS

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Many of the pioneers who first turned the sod in our fertile fields are still among us; but if we let a few years more pass by without gathering all the information we can from them, we shall lose much material on which future generations might base the story of the settlements of the state of Nebraska. It would be well, therefore, if all available material could be gathered during the next few years, and I hope that the State Historical Society may be able to extend its investigations into the work done by the various foreign immigrants. Nebraska has a large percentage of foreign population, and it is evident that this fact has had an influence in the development of our commonwealth.

It has fallen to my lot to say something about the Swedes of Nebraska. The subject calls for an incredible amount of time and labor, and about all one can do just now is to acquaint oneself with the immensity of the field. If there were to be found one person in each Swedish community who has an interest in the history of the last forty-five years and who is willing to devote time to ascertaining the facts regarding the settlements of his particular community, we might soon have a satisfactory account of the Swedes in Nebraska. I sincerely hope we may not lose too much by needless delay.

For the following I am indebted to church reports, histories of Swedish immigration, and the *Omaha-Posten*, which four years ago devoted an extra number to the story of the settlements.

¹ A paper read at the annual meeting of the Nebraska State Historical Society, January 22, 1914.

The Swedes left the old country for the same reason that their forefathers in the Viking age set out for foreign shores. The fatherland was not productive enough to support a large population. Since the founding of the Swedish colony on the Delaware in April, 1638, Swedes have been migrating to America, though the number of immigrants was wellnigh insignificant until the middle of the nineteenth century. The colony on the Delaware was short-lived, and the Swedish Lutheran churches erected there fell into the hands of the Episcopalians. Still it is worthy of note that the last minister sent out by the Lutheran state church of Sweden to the churches on the Delaware was Niklas Collin, who died in 1831. As late as 1823, Mr. Collin preached every other Sunday in the Swedish language. It is indeed remarkable that the language of the old country could have maintained itself for such a long time—almost two hundred years.

There have always been people of an adventurous spirit who struck out over the western seas for America, and there are traces to be found of individuals from Sweden who roamed about as far south as Texas and Mexico. These adventurers founded no settlements in the early years of the last century, but they doubtless interested their friends in America.

In the latter part of the forties immigration of Swedes in America increased, and families came in search of free land. To find such land it was necessary to continue the journey from New York westward. The usual course was by canal boat to Buffalo and then by steamer to Chicago. Large colonies settled in Illinois, and ere many years had passed that state was well filled, and then the immigrants found it necessary to proceed still farther to the west.

It is not known at what time the first Swede arrived in Nebraska. In the sixties considerable numbers reached Omaha either directly from Europe or from the eastern states. Some remained in Omaha, while others took

homesteads or bought cheap railway land and then settled down on the lonesome prairie. The building of the Union Pacific shops in Omaha, in 1865, afforded work for many newcomers, and at this time the Swedes began to come to Nebraska in considerable numbers. There was a great demand for machinists, blacksmiths, carpenters and other tradesmen. The building of the railroad bridge in 1871 also called for laborers. Ever since that time there has been a large colony of Swedes in the metropolis of our state. From Omaha the stream of migration turned to Saunders county and Burt county.

Rev. S. G. Larson perhaps did more than any one else toward settling the country east, west and south of Wahoo. He conducted several parties of immigrants from Omaha to Mead, Malmo and Swedeburg. It is said that three hundred obtained homesteads or railroad land through the aid of Mr. Larson. His work as pastor of Swedish Lutheran congregations brought much opportunity to assist the newcomers. He had a homestead four miles south of Mead, and, like all the others in the community, endured with fortitude the hardships of pioneer life. The Swedish Lutheran congregation of Malmo was organized in Lars Peter Bruce's sod house April 25, 1870, and the Swedish Lutheran church of Mead was established in the same year.

Among the first Swedes to settle in the Swedeburg vicinity was N. A. Aspengren. He speaks of the event as follows:

When we looked over these bare hills for the first time, June 23, 1869, there was not a human dwelling to be found. We each took our homestead and at once prepared to build some sort of shelter against wind and rain. The usual method was to dig a hole in a hillside and cover it with grass and brush, which had been brought from a neighboring ravine. Jan. 22, 1870, the settlement received its first visit by Rev. S. G. Larson of Omaha, and the first sermon was delivered in Olof Olson's home in section 6. In 1871 there were few newcomers, but in '72 and '73 larger numbers arrived.

In 1875 the doctrinal questions which had vexed the

Swedish churches, both in the old country and in America, came up in these settlements, and the result was that in a short time Mission churches arose beside the Lutheran in Mead, Malmo and Swedeburg. On the southern edge of the Swedeburg settlement we find a little town by the name of Ceresco, and there a Mission church has been erected. To the southeast of Ceresco stands another Mission church, known as Bethlehem.

Theodore Hessel, a Baptist minister, was the leader of a group of immigrants that settled at Estina, near the Platte. The Baptists were the first to organize a congregation in Wahoo. The settlers at Valley were Baptists, and that settlement now has two churches of the Baptist denomination. Lars Peterson and Andrew Egbert were the first Scandinavian settlers in Valley. They arrived in 1873. Most of the land thereabout had fallen into the hands of the Union Pacific railroad company or individual speculators. Lars Peterson, a Dane, bought his land for eight dollars an acre.

The establishment of Luther College there, in 1883, made Wahoo an important place for the Swedes of Nebraska. A pioneer in educational work among the Swedes we may well call Dr. S. M. Hill, who since 1884 has been actively at work at the college.

In 1871 a committee was sent out from Altona, Illinois, to study conditions in Nebraska, in the hope that a colony might be founded somewhere in the state. The committee came by railroad to Lincoln and then went, partly by wagon and partly on foot, to the vicinity where Stromsburg is now situated. The land was to their liking, and they took homesteads and urged their friends to do likewise. Stromsburg was founded in 1872, and a steady stream of migration to Polk county followed. The town is strikingly Swedish, as the number of Swedish churches indicates. The Lutherans, the Mission Friends, the Baptists, the Methodists, and the Free Mission are all represented.

A little to the northwest of Stromsburg is the large rural settlement of Swedehome. The railroad did not happen to come that way, and so the Swedehome settlement did not become a town. Settlers took land there in 1870 and 1871. Osceola, east of Swedehome, was founded in 1871.

At about the same time a number of Swedes settled in the neighborhood of York. The Sandahl brothers and Swan Swanson were among the first. In 1874 a Lutheran congregation was organized.

When the branch of the Union Pacific railroad was extended westward to Central City, the name Hordville was given to a Swedish settlement, where the pioneers had taken homesteads in the early seventies.

In 1864 immigrants from Dalsland, Sweden, settled on homesteads along Logan Creek in Burt county. The town of Oakland was named for John Oak, not of Swedish descent, who had previously settled there. In 1867 another party arrived. Andrew Beckman, an early pioneer, was so charmed by the country that he hastened back to Illinois to induce his friends to come to Nebraska. There are now no less than six Swedish churches in the settlement: Lutheran, Baptist, Evangelical Lutheran Mission, Methodist, Mission and Free. About ten miles to the northwest of Wakefield is a settlement by the name of Concord. Wausa, situated in the southeastern corner of Knox county, was named in honor of the Swedish king Gustavus Vasa. Mr. Thorson was the pioneer of this community, and the post office was for a time called by his name. Rev. Torell of Oakland and Rev. Fogelstrom of Omaha visited the community and recommended to many people that they establish homes there.

Swedish people settled in and northwest of Aurora. August Page settled northwest of the town in 1871.

A Swedish settlement ten miles south of Oakland is called Swaburg. There is a small colony of Swedes in Fre-

mont. Mr. E. P. Anderson went there to live in 1867. In 1881 Gustus Johnson of Farmersville, Illinois, sold his farm and moved westward. After having seen parts of Iowa, he came to Oakland; but as land in that vicinity had already become expensive, Johnson continued his journey to Wayne and Dixon counties. Through the Swedish paper *Hemlandet* the opportunities of this country were made known among the Swedes east of the Missouri River. In April, 1882, when Rev. B. M. Halland, the founder of the famous Halland settlement in Iowa, was on a visit in Wayne county, it was decided to organize a congregation, and the organization was perfected the following year.

In 1872 Peter Matson and Bengt Olson, from Galva, Illinois, settled, with their families, in what is known as the Looking Glass Valley, in the northwestern corner of Platte county. Arriving in the fall, they built their sod houses and prepared for the winter. Columbus, their nearest town, was thirty miles distant. In 1874 still more people came from Galva. They had belonged to the Methodist church in Illinois, and naturally they organized Methodist churches in their new homes. Rev. Olin Swenson, who came to the valley about 1876, built two churches. A few miles westward a large Lutheran congregation grew up. Newman Grove, in the southwestern corner of Madison county, is about ten miles from the settlement just mentioned. In 1878 a party settled northwest of the town, and two years later others took land to the north. The first company of settlers to reach Boyd county arrived in 1890, from Oakland. The Bonesteel branch of the Northwestern railroad was not built at this time. The nearest railway station was O'Neill, thirty-five miles distant.

In 1872 several Swedes took homesteads at Stockholm, Fillmore county, which is situated between Shickley and Ong.

To Saronville, in Clay county, came a company of nine "gottlandingar" (inhabitants of Gottland, Sweden) in

1871, who for some time had lived in Illinois. In the summer of 1873 more gottlandingar arrived, many of whom had been Methodists in Sweden. From Swedona, Illinois, came still another company of Methodists. It was natural that these people should begin to organize a church of their own denomination. There were, however, others who had belonged to Lutheran churches, and they organized a Lutheran church at Saronville in 1872.

Minden, founded in 1879, is situated on the eastern border of the large Swedish settlements which stretch through Kearney and Phelps counties. Charles Carlson reached Phelps county from Galesburg, Illinois, in 1874. In 1875 still others came from Illinois. In 1876 Andreas Olson, from Jemtland, Sweden, arrived with his wife and took a homestead four miles north of what is now the town of Funk.

When Phelps county was organized, in 1873, the number of Swedes living there was small, but shortly thereupon the migration to these parts set in, and now Holdrege and the country roundabout has a large Swedish population.

There are many other places that might have been mentioned in connection with Swedish immigration to Nebraska, but time and space forbid. I have named only the most important points. As time goes on our interest in the beginnings of our state will be all the keener, and we shall all be the more desirous to know who our pioneers were. We are yet so near the beginning that we may not grasp fully the significance of pioneer days. I hope, however, that our state may succeed well in preserving the records of the past and that there may be written on the pages of history at least a few chapters dealing with the Swedish element in Nebraska.

NOTE BY THE EDITOR

The following data showing the number and distribution of Swedes in Nebraska are compiled from the U. S. census of 1910. The counties named in the table are only those containing 300 or more persons born in Sweden:

SWEDES IN NEBRASKA

85

Born in Sweden	23,219
Born of parents of Swedish birth.....	26,599

49,818

Born of Parents of Swedish Birth

County	Born in Sweden	Born of Parents of Swedish Birth
Burt	1,160	1,251
Cedar	353	391
Clay	507	594
Custer	309	368
Dawson	470	540
Dixon	470	576
Dodge	327	378
Douglas	4,692	4,460
Hamilton	560	702
Kearney	667	891
Knox	778	1,010
Lancaster	1,066	1,078
Lincoln	330	440
Phelps	1,861	2,419
Platte	392	477
Polk	1,319	1,658
Saunders	1,502	1,856
Total in 17 counties.....	16,763	19,089

CLAN ORGANIZATION OF THE WINNEBAGO¹

BY OLIVER LAMERE

In the preparation of this paper I have been greatly aided by the research of the Bureau of American Ethnology, whose agent, Paul Radin, visited the Winnebago reservation and with the assistance of myself and others prepared a history of the general organization of the Winnebago Indians and of their customs. The field he covered also embraced what I shall attempt to convey to you on the clan organization of the Winnebago. This paper can give no adequate idea of its subject, for the amount of material that could be obtained would probably fill a thousand pages such as I am about to write. I am constantly embarrassed in trying to select from this mass of material those features that would most interest you; for, feeling as if I were a part of it myself, my interest is different from yours.

The Winnebago Indians are natives of Wisconsin, and about half of the tribe still remain there. So far as we

¹ A paper read at the annual meeting of the Nebraska State Historical Society, January 22, 1914.

Oliver Lamere was born at McCook, South Dakota, on February 2, 1879. His father, Frank Lamere, was of three-quarters French blood and one-quarter Winnebago, and he was probably born in Wisconsin. His mother, a full blood Winnebago, of the Bear clan, was born in Minnesota. Mr. Lamere's home has always been on the Winnebago reservation. He was educated at the Indian school at Genoa, Nebraska, and attended the Indian school at Carlisle for a short time. He has worked at farming, industrial teaching at the reservation and among the Lower Brulé Indians, and as interpreter for the Bureau of Ethnology and in collecting data and material for that institution. He received an allotment of land from the Winnebago reservation. He has been deputy assessor of Thurston county. In 1915 he was appointed a member of the Food, Drug, Dairy and Oil Commission, and still holds that office. He has a wife and family of children.

know they were first seen by white men about the year 1639 on the eastern shore of Green Bay, some twelve or or fourteen miles north of the subsequent site of the city of Green Bay. The Winnebago believe that, according to their clan stories, they originated there, at a place called Red Banks. This paper is based upon the stories of the different clans which I have heard and from personal interviews with Winnebago having particular knowledge of the story of their clan, not upon knowledge of the clan organization of other tribes or ethnology. This tribe has two exogamic divisions—the upper and the lower clans. The upper clans are Thunder-Being, commonly called Thunder Bird, the Hawk or War, Eagle, and Pigeon. The lower clans are Bear, Wolf, Water Spirit, Elk, Deer, Buffalo, Fish, and Snake.

The Winnebago do not claim descent from the animal after which the clan is named, but assert that their ancestors were transformed animals who met at Green Bay, and there were transformed into human beings. Four animals of each species were present, and the older Winnebago can tell you from which of these four brothers they descended. Their attitude toward the clan animal is in no way different from that toward any other animal. They hunt and eat at any time of the year the animal which they regard as their personal manito. According to the clan stories various clans seem to have been inspired simultaneously with the knowledge of a great gathering to be held at the Red Banks mentioned. The clans then existing in the spirit world in the spiritual being of their clan animal began to counsel together about the great meeting of transformation, and each species sent four of its finest individuals to this meeting, as has been mentioned. One old man who is of the Elk clan says:

In the beginning the Winnebago existed in the spirit world over towards the setting of the sun, where a place of existence or abode was established for them by Earth-Maker (the creator). There they existed from time unknown, until the crea-

tor spoke and said to them: "My children, you are to live on an earth that I have created and prepared for you. It is necessary that you should recognize one another there in some way. You should therefore select some animal, the animal you best love, and after which your clan shall be named and recognized." So the Elk clan people considered seriously this matter, and seeing that the Elk was not only a beautiful animal but clean and of good habits and temperament they decided to select the Elk as their clan animal.

From all of the reports on clan organization it is evident that a lodge was built, and a camp circle was formed where all had certain positions. This is shown from the fact that each clan has a particular brother or friend clan which is called upon, especially to assist in funeral rites. These friend clans speak of one another as sitting opposite each other in the original lodge. It is said that the Water Spirit clan came with the specific power to hold the position of chiefship in the tribe, but it so happened that when the original fire was about to be started the Water Spirit clan tried to get the fire but failed. Then the other clans had a trial at building this fire but the Thunder clansmen were the only ones who succeeded, and they therefore came in possession of the tribal chiefship, and have always held it until recent years. The United States government now recognizes whomever it chooses as chief of the tribe, and the Indians often say that the choice always falls upon those to whom it can most easily dictate, and with little regard to fitness. The Water Spirit clan, however, did not lose its position of chiefship which they still maintained, and all their names have some syllable which implies chiefship.

The chief of the tribe was always selected from the Thunder clan, as has been said. He stood as the exponent of peace at all times. He could not lead a war party, although according to some he could accompany such a party. If he heard of any one of his tribe about to lead a party on the war path, and if he thought the leader lacked in war

power and generalship, the chief would take his peace pipe and go to the leader and ask him to stay his war venture. If the war leader disregarded the counsel of the chief and went in spite of it, the chief could follow him to the first night's camp out, and there, if he placed his pipe immediately across the leader's path, the war leader would have to stop and return, for to go on would be sacrilege. The chief's lodge always stood in the center of the village, and it contained a sacred fireplace.

The lodge was a sanctuary for all wrongdoers. No one could be killed there, and a prisoner of war escaping to it had to be spared. The Thunder clan chief always acted as intercessor between wrongdoers and their avengers. Even in so extreme a case as the murder of a clansman, the chief would always attempt a reconciliation by which the life of the offender might be spared. On the other hand it is said the Hawk or War clan also maintained a lodge in the village known as the war lodge, and a prisoner of war taking refuge in it was immediately put to death. The Hawk lodge was the general meeting place for the warriors of the entire tribe. The Bear clan at its origin had disciplinary power and would therefore maintain a sacred lodge in a village. The lodge would be known as the soldiers lodge and its members as soldiers.

The functions of this clan consisted in the regulation of the hunt, general disciplinary rights, and the duty of carrying into effect the orders of the Thunder clan chief. At a tribal hunt their power was seen in its most characteristic development. Whoever disregarded the rules laid down by them, such as shooting too early or cutting up the captured animal out of turn, could be deprived of his bow and arrows; these would be restored to him only if he acquiesced in his punishment. But should he repeat the offence, bow and arrows would be broken.

The general disciplinary powers were those of patrolling the village and preventing disorder. The leader of the clan carried an emblem symbolical of his power. The Bear

clansmen always carried this emblem of authority whenever they patrolled the village or were on duty. They would make their rounds singing, and at their approach all noise would immediately cease. They executed all capital punishments. If the Thunder clan chief failed in his intercessions for a criminal the latter was handed over to the Bear lodge for punishment.

The Elk clan, it is said, acted as usher at the original meeting and was preordained to act in that capacity through life; but this is rather vague. The Buffalo clan is said to have originated with the mission of a herald, and this, in its full meaning, has also become obscure. The few who give this information say that the Buffalo lodge should always be placed near the lodge of the chief, where it reports every morning to learn his desires and hear his announcements. The supposition that all the clans came possessing some mission, but that time, war, and contact with civilization have made it difficult to obtain full information as to its exact nature is probably correct. All accounts do not agree, and some of the clans are now extinct or have been discontinued.

The marriage relation was regulated by strict rules and customs, which in olden times were never violated. An upper-clansman must marry a woman of the lower clan and vice versa. A member of an upper clan may select his wife from any of the lower clans. Those Winnebago who cared to give an explanation of their exogamy declared that the members of the clans of each class were closely related and should not therefore intermarry, and these regulations were prescribed for the purpose of producing a stronger race, the relationship between upper and lower clansmen not being so close. Descent is patrilineal, and a man's name generally comes from his father's clan or carries some syllable denoting his father's clan name. Formerly the name was always that of the father's clan, but this system has been largely abandoned. Certain irregularities have crept into this tribal custom; thus, many individ-

uals bear names belonging to the mother's clan. Whenever a person bore a name of a clan not his father's he had a paternal ancestor who was either a white man or an Indian of another tribe. Such individuals had of course no Winnebago clan name, and consequently a name was taken from the wife's clan. This custom thus begun seems to have become a precedent, and many names were thereafter taken from the maternal clan. Notwithstanding this innovation descent is still reckoned in the paternal line.

Other customs of interest are, that a married man always lives with his wife's parents the first few years after marriage; he must never address his mother-in-law and must act as servant to his father-in-law as long as he lives with him.

The relation of a man to his maternal uncle is peculiar; he may take liberties with him which he is expressly prohibited from taking with his paternal uncle and aunt or his maternal aunt. Yet, in spite of this larger freedom, there is particularly close relationship between them. The nephew must always act as servant to the uncle; on the warpath he is, after a fashion, an esquire; and should the uncle be slain or captured while warpath leader, the nephew should then suffer himself to be slain.

Winnebago names are derived from the clan animals and their characteristics. For example, a Bear clansman may be named White Bear, and a Thunder clansman might be called Strikes-the-Tree, after a characteristic of lightning. Every clan has certain objects, some materialistic and others invisible and immaterialistic, which are considered as belonging especially to it. If a member of one clan asks for any one of these specific objects belonging to another, he never obtains it but receives instead the most valuable present that the clan addressed can give. However, it is considered so immodest to make such a request that no self-respecting Indian would be likely to do so; for example, to ask a member of the Thunder clan for a brand from his fireplace or to sit on the fire logs in his

house, to admire or criticize anything in the lodge of a Bear clansman or sit in his doorway, or to ask water of a Wolf or Water Spirit clan. Should one sit in the doorway of a member of the Bear clan he would not be told to get out, but the clansman would spread a robe or something good to sit upon and politely ask the visitor to be seated there, and it is always well to accept such hospitality.

While the clans have numerous customs there are no customs or beliefs distinctive of the upper and lower clansmen. In addition to those mentioned, there are characteristic ceremonies at birth, at the naming of a child, at death, and at a burial and funeral wake of a clan member. In early days, where the tribe was concerned in any question touching land or other earthly affairs, the Bear clan would be consulted before anything definite was done. Likewise the Thunder clan would be consulted in regard to aerial things, from trees up; and the Water Spirit clan in regard to things of the water.

In this paper I can only touch briefly on the most important features of clan organization. To fully explain the clan organization would require many volumes, and I will conclude with a description of some few of the tribal customs. In olden times the Winnebago always lived in villages. I presume this was for social intercourse as well as for protection and counsel. It is said that there was a custom of counselling children incessantly; but it has nearly dropped into disuse. The children would be called in as the dusk began; for it was believed that all bad things went about in darkness, having reference principally to the dangers of falling into temptation, possibly also to wild animals. So when the young people, including children, were all in and the family circle around the fireplace was full, the old grandfather (as it is usually the oldest member of the lodge who speaks) would begin to counsel them. He would tell them how they should conduct themselves through life—that they must learn to hold their tongues,

that they should fast and strive to obtain some blessing from the Great Spirit, to enable them to protect their people in time of trouble or that they might be blessed with power for good, to be brave and learn the way of the forest, and to be good hunters. And he would tell the young girls how to order their lives for happiness, of the sacred marriage state, and of the responsibilities of bearing children. When young persons asked for special stories, the old man would have them fast a day first, or perhaps require them to get an especially good fire log and place it in the fire. This was done of course to impress the young mind.

Fasting was encouraged at all times. It is said that oftentimes the old man would offer a young boy food and a piece of charcoal at the same time. Should the boy reach out and take the food, the old man would punish him and blacken his face with the charcoal and send him out. The object of this was to create a lowly spirit in the boy, as they believed the Great Spirit would not bless any one in a proud state of mind. The face is always blackened with wood charcoal when fasting. It often happens that many would be out fasting at the same time, and it was customary for all to sing a song or a chant of praise, or pray to the spirits. This always occurs about dusk. Fasting is always done in seclusion; so on a quiet evening, when all in the village is still, a cry from the hills of a loved one who perhaps has been fasting in the distance for several days, and whose ordeal has been so severe as to reduce his strength, may be heard, in a weak and pitiful voice. The cry of one seeking a blessing in supplication to the spirits might start another in a distant part of the hills, and so on until many are wailing together. And in the lodge when the parents and younger brothers and sisters at home heard the voice of sons and brothers calling weakly in the distance, the family circle would be greatly moved and the mother, the first to show her emotion, would allow a silent

tear to roll down her cheek, and then the sisters; and finally, unable to restrain themselves, mother and sisters would burst out weeping in the monotone characteristic of Indian women. The father would bow his head in pity for his son, for he knew all the struggles and sorrows that must be endured in seeking a great blessing. It is said that very frequently the whole village would be aroused by the cry to the Great Spirit.²

² A quite similar practice of Negroes in the black belt of the South has come under my personal observation. It is said of these night-time, errant suppliants that they are "gone seekin'." Like habits among the Hebrews are chronicled in both testaments of the Bible.—ED.

WOMEN OF TERRITORIAL NEBRASKA

BY MRS. KITTIE (SAMUEL W.) MCGREW

In accepting the invitation to write something of the pioneer women and the home life of Nebraska, I regret the lack of a general personal knowledge of my subjects throughout the territory. However, the characteristic qualities of the two or three intimate friends of my childhood and of later years, of whom I have chosen to write, may in a measure represent the courage, integrity, and intense womanliness of their class.

Always eager and daring, the man has fared forth to spy out the new land, and the woman, loving, fearful, yet hopeful, has been at his side. How well and nobly the women of Nebraska have borne the tasks and burdens incident to life in a new country, is "as a tale that is told." Some of them had been daintily reared and well educated in their eastern homes; but, daring danger and privation, they gladly and hopefully accompanied father, husband, brother or lover.

The first white woman to settle in Nemaha county or southeastern Nebraska was Mrs. Thomas B. Edwards, who came with her husband and a few men from Oregon, Holt county, Missouri. Richard Brown, the first settler, came from the same locality a few weeks prior—on August 29, 1854. Mr. Edwards was a carpenter and a preacher of the Christian faith. Husband and wife were alike zealous in the cause of their church, and they ministered to all sorts and conditions. For more than a year there was no physician in the locality or nearer than Oregon, Missouri, fifty miles southeast. The change of climate and water and the intensely cold winter weather caused much suffering, sickness, and some deaths. The skill and simple, homely reme-

dies of Mrs. Edwards were in urgent demand, and often hers was the only hand to bring comfort, help or cheer in time of severe illness or deep sorrow. At births or deaths alike, her presence was sought and, at whatever personal inconvenience, seldom denied. With a highly sympathetic nature, fine physique, indomitable courage and a heart overflowing with love for her Master's cause, Mrs. Edwards was an ideal pioneer woman. Long hours of patient, watchful care, sleepless nights, and toilsome days were her lot through many years. She was the mother of seven children, some of them residents of Nemaha county now. Her mind and body well preserved until the last illness of a few weeks' duration, she died in 1907.

Mr. Edwards helped to build some of the first log houses in Brownville. I distinctly remember the interior of one log cabin, built in 1855 and superior in many ways to the majority in the locality. My parents lived in this cabin for more than a year. The main room was about 14x18, and besides there was a lean-to or shed kitchen and a loft. A ladder served as stairway. The floors were of newly sawed cottonwood boards. At one end of the room was a huge fireplace made of rough stone plastered with clay. The walls were entirely covered with newspapers, the corners lapped and each secured by a tack driven through a half-inch square of red flannel. This device not only held the paper more firmly in its place; the bright bits of flannel added to the attractiveness of the room. In one corner a big four-poster cord bedstead, with plethoric grass tick surmounted by a fat feather bed dressed in a hand-woven counterpane, or often a gay patchwork quilt, was a sight fearful and wonderful to behold. A little walnut stool stood near the head of the bed without which it would be a difficult scramble to reach the top of the structure. Underneath the four-poster there was a convenient trundle-bed that was pulled out in the evening for the children, or often the grown-ups would sleep there if company came. The floor was gay with braided rugs. A tall walnut

bureau, a large chest of cherry wood, a few wooden rockers and some split-bottom hickory chairs completed the main furnishings, and a tall eight-day clock ticked "merrily the minutes away." On the bureau tall candlesticks of brass held homemade tallow candles molded by the careful housewife. The bureau, chest and candle-molds are cherished possessions today.

The kitchen was a very attractive place, with a good stove and other conveniences not usually found in the pioneer cabins. Its walls were hung with strings of red peppers, mangoes, popcorn and some choice seed corn tied together with the husks and slipped on slender sticks. A great variety of gourds hung from wooden pegs driven into the walls. Some of the gourds were used for dipping water and some, with openings near the slender handles, held rice, dried corn, berries or other household necessities and made fine receptacles. A sputtering two-lipped grease lamp, with cotton flannel wick, or perhaps candle wicking, gave a fitful and feeble light.

Wild game was plentiful. There were turkeys, deer, geese, ducks, an occasional buffalo, prairie chickens, and quails. Wild grapes, plums, crab-apples, gooseberries, and other fruits gave variety to the fare. Occasionally a bee tree gave up a rich store of honey, and sorghum molasses was a not unimportant provision in the larder of the thrifty housewife.

In the yard were a well with a long wooden beam, or sweep, from which hung a chain and the old oaken bucket, a gourd dipper conveniently near, and a huge excavated log for a watering trough. Nearby was the great ash leach or hopper where the lye could be run off into the log trough to be made into a choice brand of soft soap. Near the kitchen door stood a split log bench where the family might have the tin basin for an early morning wash. There were great iron or copper kettles, suspended on poles or forked sticks, which were used in making soap and hominy and for heating water for the family washing and for

butchering. All these were considered necessary adjuncts to a well regulated pioneer household.

An incident related by Mr. Henry Culwell, in a paper read before the Nemaha County Historical Society, January 31, 1907, referring to educational advantages, or rather disadvantages, at an early day, may be interesting:

There were no schools nearer than Brownville or Nemaha City, five miles distant from my father's claim. A man named Grover, on an adjoining claim, taught a subscription school in his log cabin during the fall and winter of 1857-8. Mr. Grover was a bachelor. His cabin was built over a cellar or basement, where he did his cooking on an old time shanghai, or step stove. The pupils would take pumpkin, squash, potatoes and sometimes meat, which could be baked in the oven and were a welcome addition to the oftentimes meager noon lunch.

This log house was still standing in 1907, after fifty years of constant service. Some of the pupils of that long ago are living in Nemaha county now. The parents of Ben Taylor Skeen, representative in the legislature of 1911, were living on an adjoining claim, and their children attended this school.

In the fifties the steamboats brought all the merchandise for settlements along the river. Some days there were as many as five or six boats at the landing, loading or unloading freight. They had wood yards all along the route. The officers and passengers were usually very congenial and pleasant people. Many political officers, with their wives, came or passed on the boats, and warm friendships were formed with them. As diversion from the outside world was limited to the visits of these excursionists, when a boat came to the landing there was rejoicing in the village. The elite were often asked for dinner or to a dance on the boat if it stopped over night. When citizens gave a complimentary ball, public officers and other guests got a taste of true western hospitality.

One occasion of this kind in 1858, at Brownville, is often recalled by old-timers. There was a lively crowd of

young men and women who had been royally entertained by officers and excursionists as they went up the river, and as the boats were to be tied up for the night on the return trip, a grand ball was given in a new building as yet unoccupied, sixty-five or seventy feet in length and used afterwards as a drug store by Henry C. Lett and William H. McCreery. The supper, which promised to be unusually good, was served in a hotel nearby, owned by A. J. Benedict and later called the American House. All the "prominent" people were present. Several parents of children less than a year old, who loved to mingle with the gay crowd, were invited to bring the babies and be care free all the evening; the young people who were giving the ball guaranteeing that the little darlings should be properly cared for.

Some of the young men in attendance were E. W. Bedford, Robert Teare, D. H. McLaughlin, John L. Carson, Dan L. McGarvey and W. H. Hoover. The young ladies were Inez Belden, Lenora Kennedy, the Brockman sisters, Mattie and Harriet Favorite, the latter now Mrs. W. H. Hoover. The babies were cared for in the little room in the rear of the building. The door was kept closed so that the noise of the band might not disturb their slumbers. This band was famous throughout the southeast section, the first and best. Its leader was J. R. Dye, who is now living at San Diego, California. When the hour for going home arrived the lights in the little room were purposely lowered. The tired and sleepy, yet happy mothers received the precious bundles from the careful and watchful attendants.

There was great surprise and indignation among the mothers when, arriving at home, a lusty boy baby was found in place of a daughter, or perhaps a darling brunette was exchanged for a little red-head. There were then no telephones to expedite a solution of the mysteries. There were few sidewalks, and the process of restoration required hours of weary tramping. Some of the parents lived on

claims adjoining the town, and there was great difficulty in reaching them. The drizzle of the early evening had turned to steady rain, and the tired, sleepy, disgusted and almost distracted parents threatened all sorts of vengeance upon the young folk who had played the cruel joke. Several of the participants in that evening's frolic are living in the vicinity at this time.

Among the early arrivals was Mrs. McComas, mother of Dr. E. M. McComas and Mrs. Robert W. Furnas. Mother McComas came to the territory with the Furnas family in 1855. Every one soon learned to call her Grandmother McComas as she daily went out among the people bent on kindly deeds, advising, comforting and helping any in sorrow or other distress. Her gentle dignity and beautiful spirit seemed always to breathe a benediction. Two-thirds of the children ushered into life in the vicinity of Brownville during the first twenty years of its existence were crooned over and cared for by this gracious woman. In later years Grandmother McComas spent some part of each week at the beautiful Walnut Grove Cemetery, where the beloved daughter and several of the grandchildren were sleeping. One day the little old-fashioned basket which held her knitting was left hanging on the branch of a stately pine which had been planted years before at the grave of a beloved grandson, Phillip Furnas. Perhaps she knew this was her last walk to the quiet place where so many loves and hopes were buried. A short while and the tired hands were folded. They had dropped unfinished the last piece of knitting, a pair of half hose for her friend, Dr. C. F. Stewart, one of the first physicians in that part of the country and who is still practicing. This piece of knitting was with a collection of Governor R. W. Furnas in the State Historical Society.

As the years passed the region beyond the border of the river began to develop. In 1862 Rev. J. M. Young with some friends, who were seeking a location for colonizing, celebrated the Fourth of July at a point later called Lan-

caster and now a part of the city of Lincoln. This party had with them a flag, which was unfurled, and some patriotic speeches were made. The following Sunday Mr. Young preached what he supposed to be the first sermon in the locality. A Sunday school was established, which, with the church service, was continued for several years.

Mrs. Young, a zealous, devout woman, was one of the original crusaders led by Mrs. Lewis, mother of Dr. Dio Lewis. This crusade was several years earlier than the Hillsboro, Ohio, crusade led by Mother Thompson—the foundation of the W. C. T. U. work. Mrs. Young brought into the home in the new west the same devout spirit, anxious care for purity, temperance and reform that had led her through the trying ordeals in Ohio. She was a steadfast believer in the efficacy of earnest prayer.

The Youngs had some means when they came west, but the new life brought much hardship, toil and privation. The first two winters, of 1863 and 1864, were intensely cold. Often for a week no communication could be held with neighbors. Mother Young with her large family bore her share of the hardships and dangers of the community. Frugal fare and rigid economy were necessary, and often they suffered cold and hunger.

Mr. and Mrs. Young deeded alternate blocks in forty acres of their homestead for the establishment of a school in the interest of the Methodist Protestant church. The block which was devoted to the use of the State Historical Society when the city of Lincoln was platted was a part of this gift. I suggest that the Historical Society have a portrait or place a bronze tablet in the new Historical building in memory of this faithful pioneer couple. The old stone house at Eighteenth and O streets, built by the Youngs, was considered almost palatial. Its doors were hospitably open for visitors within the town and to friends of other days.

In educational work Miss Eliza C. Morgan, preceptress

and teacher in the Normal School at Peru, Nebraska, for more than twenty-five years, was one of the strong pioneer characters. Hundreds were influenced and imbued by her high ideals.

Another pioneer woman in educational work was Mrs. Ella Taggert Schick, who was the first woman elected to the office of county superintendent of public instruction. Mrs. Schick's election was contested by M. J. Ferm on the ground of ineligibility. Judge Jefferson H. Broady found that there was nothing in the statute prohibiting women from holding the office. Mrs. Schick was an efficient officer; she raised the standard of requirement for teachers' certificates and demanded higher and equal wages for men and women doing the same work.

Looking back to the fifties and early sixties we recognize the solid rock upon which the women of the new west builded, better perhaps than they then knew. The true home spirit born in rude cabins was fostered and developed at the fireside by the wives, mothers and sisters. The need of school and church as realized and urged by the earnest Christian women was the precursor of the educational and religious progress of the territory.

FIRST SETTLEMENT OF THE SCOTTS BLUFF COUNTRY

BY GRANT L. SHUMWAY

As far back as 1845 some Mexicans came up from Santa Fe and started agriculture in the North Platte valley, in the immediate vicinity of Fort Laramie, but with indifferent success. The climate and soil of the almost primitive wilderness seemed unfitted for the arts of domesticity, for the same soil and geographical location yield abundant return to the frugal husbandman today.

That was forty years before Captain W. R. Akers and Virgil Grout came into the valley from Fort Collins and, settling about ten miles west of the Nebraska-Wyoming line, started the movement of modern irrigation. This was the first irrigation and successful farming in the Scotts Bluff country. The first irrigation of land now within Scotts Bluff county was begun a year later, when George Bouton and Ben Gentry had some small crops in along the Winter Creek Run, about five miles northeast of the present city of Scotts Bluff. Dry weather set in, and Gentry took a plow and ran a furrow from the running water that came from Winter Springs, the water following him into a field of small grain.

Now concerning the first houses. During the years of the Pony Express and the Overland stage, there were several sod structures erected along the line in this country, at least two of which were in the territory now embraced by Scotts Bluff county. Two other stations were in Morrill county, one at Mud Springs, now Simla, where Jim Moore started on his first ride for the Pony Express. The location was afterwards appropriated by him for ranch purposes.

The Chimney Rock station was about ten miles west of the present site of Bridgeport. The Scotts Bluff station was about five miles east of the famous bluff or mountain. In 1871 this site was appropriated by Mark M. Coad. The other station referred to was on lower Horse Creek. In 1873 John Sparks built a sod house on lower Horse Creek, a little northeast of the old stage station there. The Red Cloud agency was then situated where the "Lower P. F. Ranch" was afterward located, and when Mr. Sparks built the ranch house he was prepared to fight Indians if occasion required. This house was 24x26 feet inside, with walls 30 inches thick. It had three windows, with plank shutters, and a door of like material, all from a sawmill in the Laramie Mountains. This was the same mill which supplied so much material for the buildings of Fort Laramie. The floor and roof boards were double, and the latter were overlaid with several inches of dirt. There were four portholes in the walls, one on each side, made in the manner of an hourglass in a horizontal position, to give a wide range of territory in case of Indian attack. We have no record that the house was ever attacked.

The old soddy is now in ruins, although some of the material, including a part of the lumber, is owned by L. J. Wyman, owner of the land on which the building was situated. Mr. Wyman says that "at this point the trail leaves the bottom and heads for the Robidoux Pass."¹ He refers to it as the "Oregon Trail."

There was a post office called Little Moon established in this sod cabin, and the building was soon enlarged to make room for it and the ranch hands. William Lancaster

¹This name is commonly spelled both Robidou and Robidoux, though the better usage among authors is to leave off the x. Miss Stella M. Drumm, librarian of the Missouri Historical Society, has recently written me the following information touching the spelling of the name which seems conclusive:

All members of the Robidou family here spelled their name without the x. I think one reason that you frequently find the name with the added x is due to the fact that the father, Joseph Robidou, his

was the first postmaster. He moved to the eastern part of the state in 1873 or 1874, where he went into the drug business. The house faced the southeast, and Mr. Sparks had about two acres surrounded by sod walls three feet thick and five feet high. He also fenced in a meadow of about 160 acres with wire; a part of this fence still stands after forty years.

The ranch was sold to W. C. Lane and Thomas Sturgis in 1876, Mr. Sparks moving to Nevada, where he became governor.² While here he owned a valuable riding horse which he kept for his wife who loved to ride the great prairies. After his departure the horse was in charge of Jim Shaw, "Fiddler" Campbell's "buddy", and was kept at the Circle Arrow east of Kimball, then called Antelopeville, and at the Circle Block on the head of Pumpkin Creek. Once S. J. Robb, foreman of the Circle Block, was riding "Old Fox", as the horse was called, when he ran on to a bunch of wild horses. Old Fox so quickly overtook them that Robb did not have time to use his lariat; but he seized one by the tail, hindering the beast so that another cowboy following on a slower horse roped and captured it. A little before and after Jim's trouble over the Collins shooting affair at Camp Clarke bridge, the horse was in care of Chris Streeks, and Old Fox became my wife's favorite riding horse. He was of such a fine spirit that

sons, Joseph Jr. and Francois, used a flourish when signing their last name which gives one the impression of a final x.

Miss Drumm sent the following tracing of an actual signature of Francois Robidou:

² Mr. Sparks was elected governor of Nevada in 1902, as a "Silver Democrat". He assumed the office in January, 1903, but died in 1906, before the expiration of the term of four years.—ED.

after getting settled in Nevada Mr. Sparks had him shipped to that state.

In 1882 L. J. Wyman came to this country and went to work for Lane & Sturgis. He made his home in the famous old soddy for many years. He now owns the place and lives nearby and has the distinction of being one of the very first of the permanent settlers of the county. Charles Foster came about the same time; and Perry Braziel, a Texan, who "met up" with old "Shanghai" Pierce at Coffeyville, had drifted "up the trail to the North River" in 1880, and he went to work for Mark M. Coad in 1882. These men became permanent settlers of the county and are still residing here.

I see I neglected to describe the Coad ranch house. It was built for the Pony Express, facing the south, was 20x50 feet, with walls 30 inches and the sods 8 or 10 inches thick, cedar cross logs and ridge poles, and poles and dirt for the roof, which was supported by a row of posts across the center of the structure. It contained two rooms, the smaller, 12x20, being a kitchen. A large sod fireplace added cheer to the other room.

R. C. ("Fiddler") Campbell, W. E. ("Sandy") Ingraham, and George Marsh were the next to "cut loose from the range" and settle down on Scotts Bluff county soil. They built their log cabins on the south side of the river in the fall of 1884, Campbell near the old Coad ranch and the other two in Mitchell valley near the Bay State. In the spring of 1885 each of them broke about ten acres, as an indication of good faith as claimants under the preëmption law. Ingraham was kicked to death by a colt, Marsh has lately removed to Montana, and Campbell yet resides on the original homestead, his first log cabin being a part of his present commodious and comfortable bungalow.

In the spring of 1885 "Sailor Joe" Hanson built a log domicile in Mitchell valley and resided there until recent years, or until his boy met a terrible death by being

dragged over the prairie by a runaway saddle horse. Sandy Ingraham roped the runaway, but the boy was dead.

In the summer of 1885 many new people came. In the latter part of August Albert W. Mills, who lately died, came up the river and settled on the north side, about five miles southeast of the present city of Scotts Bluff, when he immediately commenced the erection of a sod house. He plowed the first furrows on the north side of the river in Scotts Bluff county, with an old "grasshopper" breaker, and was the first of the granger class of citizens in the county.

On September 10, Wellington Clark, C. D. Purdy, Joe Smith, G. W. Fairfield, and several others arrived and settled near the present site of Minatare, and Joseph Stephens in Cedar Cañon. Each selected a claim, assisted by Fairfield, the surveyor who planted the corners in the greater part of Scotts Bluff county. Smith and others camped at the Mills place several days, eating meals within the walls before the roof was on. A well was driven on the Wellington Clark claim, and the river being some distance away Mr. Purdy milked a cow for priming for the pump. Joe Smith's house was the first erected, and the claim he filed on was later platted as Tabor, which was the starting of Minatare. The Mills house was begun first, but Smith's was completed first.

Gering was platted on March 28, 1888; Scotts Bluff, February 5, 1899; Sunflower, February 26, 1900, but the name was changed to Mitchell November 16, of the same year; the plat of Minatare was filed February 5, 1900; and Morrill was platted March 22, 1906.

SUPPLEMENT BY THE EDITOR

Mr. Shumway's mention of the situation of the Red Cloud agency calls for a brief explanation of the very interesting circumstances in which it came to be placed there and which especially illustrates the vicious vacillation at Washington in the conduct of Indian affairs.

In 1879, soon after the final settlement of these Indians at the Pine Ridge agency, their agent complained that the reports of the last fifteen years "form but a continued history of removals and creation of new agencies. Since 1863, when Fort Laramie was the abiding place of these people, they have up to the present moved eight or ten times, sometimes a distance of three or four hundred miles."³

The commissioner of Indian affairs in his annual report, dated November 15, 1871, said:

The Sioux of the band under the noted chief Red Cloud have for the time being a temporary location north of the Platte River, about thirty miles south [southeast] of Fort Laramie, Wyoming Territory.⁴

The Indians wanted to go south of the Platte, while the agent tried in vain to establish them at a permanent agency on Rawhide Creek, about forty miles north of Fort Laramie.

The chiefs and headmen then met in council on the 29th day of June, and selected the site we now occupy, thirty-two miles below Fort Laramie, on the north side of the Platte River, and asked that I occupy it as soon as possible, and resume the issue of rations.⁵

A temporary agency was established here. The ruins of the agency buildings are on the northwest quarter of section 3, township 23, range 60 west, a short distance from the site of the Lower P. F. ranch house, and a little over a mile, nearly west, from the town of Henry, Nebraska, which is situated in the northwestern corner of section 3, township 23, range 58 west, but range 59 is omitted on that side, which begins with section 3, range 60.

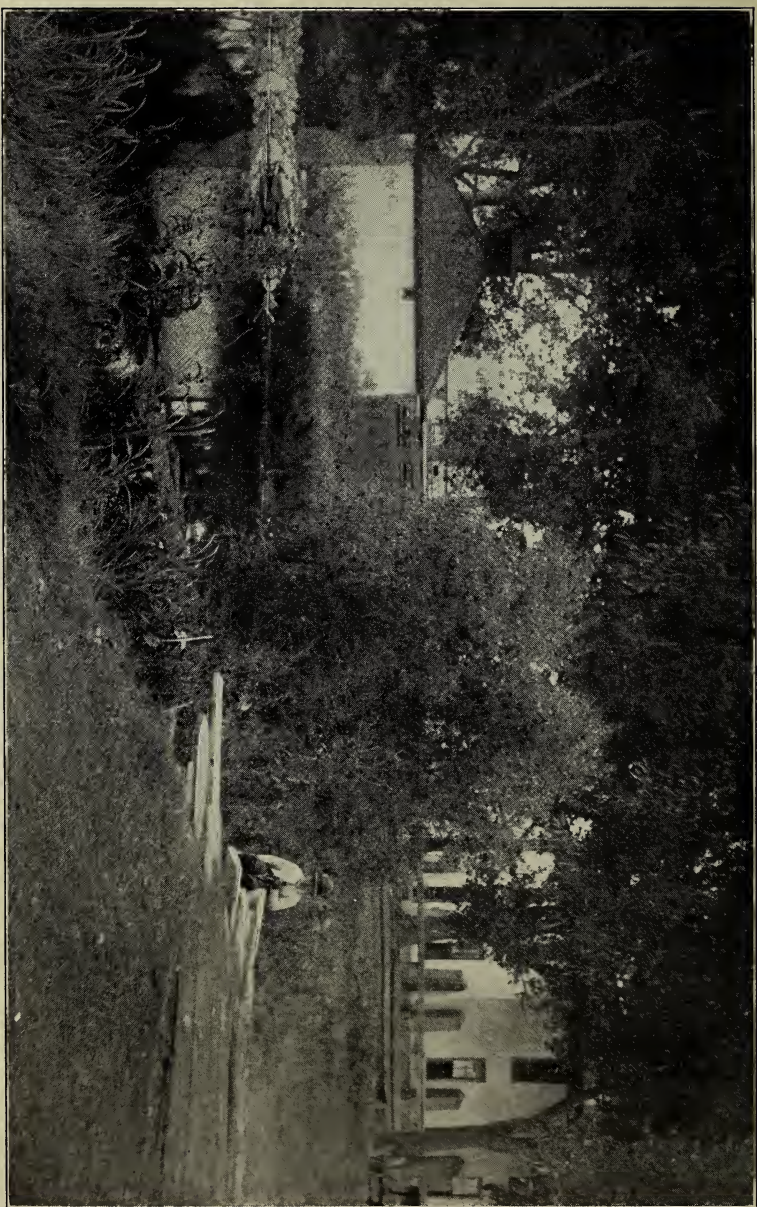
Mr. Erle H. Reid of Torrington, Wyo., wrote the following information about the P. F. Ranch after making an investigation in December, 1917:

At the time the map of the Reclamation Service was made, 1908 I believe, the nearest station was Pratt, since abandoned. There is nothing now to mark the spot, and there was never anything more there than a section house and tool house. These buildings were moved east of the state line to Henry when it was laid out. I am unable to account for the surveying trick that eliminates sections 5 and 6 and the major portion of section 4 from range 58; all of range 59 and sections 1, 2, and what appears to be a portion of section 3 from range 60. I was also under the impression that the state line between Wyoming and Nebraska followed the 104th meridian, but you will note from the map that the meridian is almost three miles east of the line. As I think back I believe that the topographer who located Pratt on the south side of the track was rather arbitrary about it, for the section house was on the north side of the track and only the tool house on the other side.

³ *Report of the Commissioner of Indian Affairs, 1879, p. 37.*

⁴ *Ibid.*, 1871, p. 4.

⁵ Report of J. H. Wham, special agent at the Red Cloud agency, October 26, 1871, *ibid.*, pp. 698, 699.



PRESENT BUILDINGS AND SPRING, LOWER P. F. RANCH
Photographed by A. E. Sheldon, July 1916

No doubt you know that the ranch in question took its name from the Pratt and Ferris Cattle Company who were its one time, and, locally at least, its best known owners. I use the plural advisedly, for the company was not incorporated, as far as I can learn. Ferris had the controlling interest, which he sold to Levi Z. Leiter, and the division of this property by an action in partition established our law on that subject in Wyoming. The case is known as Field versus Leiter, the "Field" being Marshall Field of Chicago, whom Colonel Pratt had constituted his trustee during his life time. It established some law but left a cloud on the title to the land involved, and the old ranch has never been cut up.

While I said above that the ranch took its name from the name of the company I am rather inclined to think that it came directly from the brand which probably was used before the ranch was named. The brand is made thus:

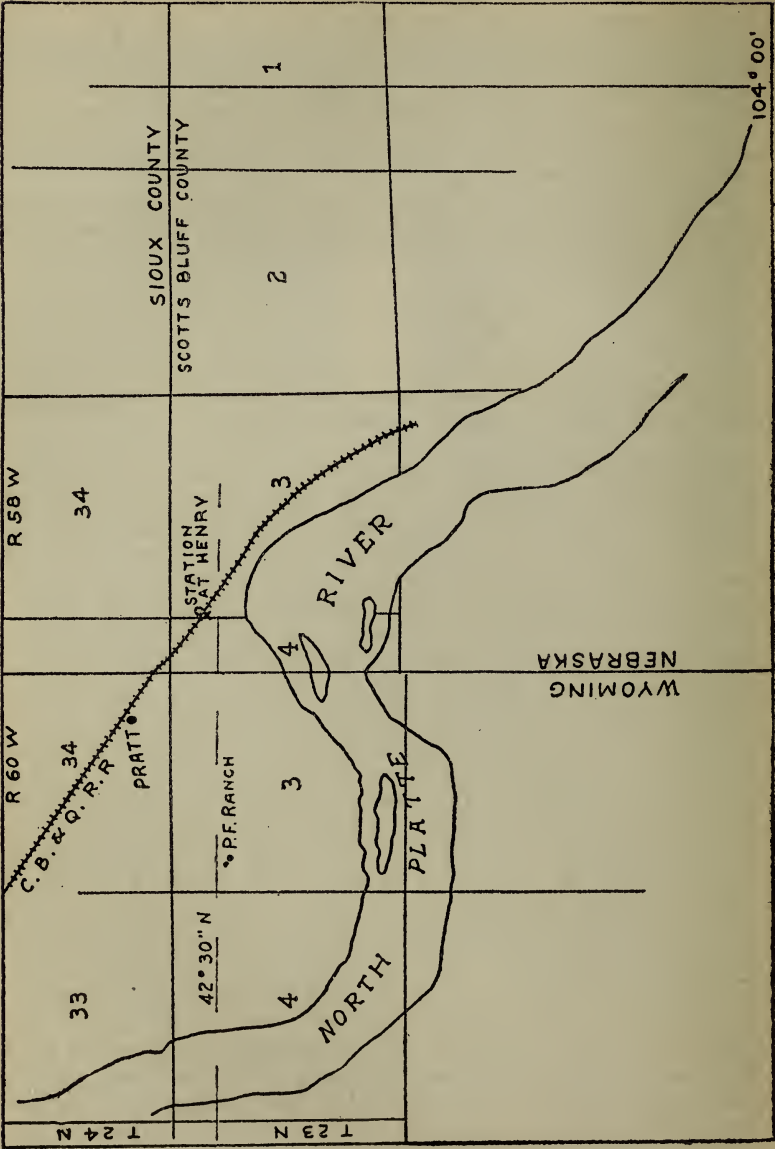


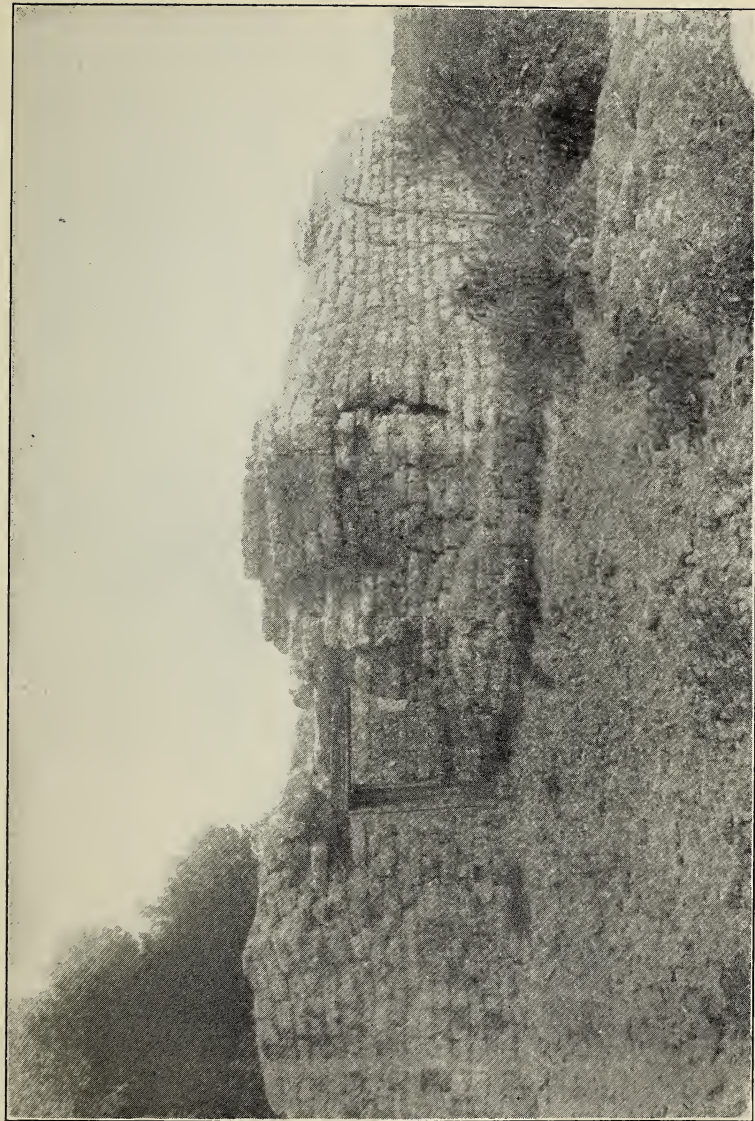
I traced the enclosed map from a map made by the U. S. Reclamation Service, and it is accurate. [See next page.]

On September 15, 1872, the agent reported that there were at the agency, 6,320 Teton Sioux, 1,515 Cheyenne, and 1,342 Arapaho. These Sioux comprised all of the Oglala band of the Teton or prairie Sioux, excepting about thirty lodges of hostiles, and the Upper Brulés.⁶ Red Cloud, chief of the Oglala, was a crafty and masterful leader of the large number of the Indians of the plains who held out against the peace policy persistently pursued at Washington, which involved also the plan of settling all the Indians on reservations. Spotted Tail, not much his inferior in prestige, was a principal chief of the Brulé band of the Teton Sioux. In the clash of interests and attitudes toward the policy of their white masters, the influence and practical jurisdiction of these chiefs was variable and uncertain. Thus, while Spotted Tail was generally classed as a chief of the Upper Brulés, in 1865 he acted as chief of the Lower Brulés. The chiefs of the Brulé tribe signed the Sioux treaty of 1868, as such, without making the "Upper" and "Lower" distinction. But these two powerful insurgent chiefs were alike in this: they persistently wandered, and not far apart, until they obtained the permanent locations they preferred from the first. In spite of Red Cloud's opposition, early in August, 1873, the agency was moved from the Platte to a place on the right bank of White River about a mile east of the site now occupied by Fort Robinson. This post was established soon after the removal, for the purpose of controlling these turbulent Indians.⁷

⁶ *Ibid.*, 1872, p. 267; *ibid.*, 1873, p. 338.

⁷ *Ibid.*, 1873, p. 243; *ibid.*, 1874, p. 251.





RUINS OF LOWER P. F. RANCH HOUSE

Built late in the Seventies or early Eighties. Photographed by A. E. Sheldon, July 1916.

In 1867, 1,200 Brulé and Oglala, under Spotted Tail and Swift Bear, were ranging on the Republican River, and at that time the Lower Brulés were "fully committed to the project of starting a reservation at the mouth of White River" On November 6, 1868, the superintendent of the northern superintendency reported that "Spotted Tail, Swift Bear, and their followers, numbering in all about 1,200 Indians, have acted in the utmost good faith, and in compliance with the treaty have moved from their hunting grounds south of the Platte river to the new reservation in Dakota."⁸

The agency, called Whetstone, was established in August, 1868, on the west bank of the Missouri River near the mouth of Whetstone Creek, about eighteen miles by wagon road above Fort Randall and now in Gregory county, South Dakota. A year later the Indians immediately at the agency were about one thousand seceders from various bands of Sioux and Cheyenne, called Loafers. Spotted Tail was not yet settled down near the agency but had a roving camp from thirty to sixty miles distant. His people disliked the location and much preferred the forks of White River, about sixty miles, in a direct line, above its mouth, which is now on the northern boundary of Mellette county. There were some Oglala with Spotted Tail.⁹

In 1870 about 4,500—Upper Brulés, Oglala and Loafers—were drawing subsistence at Whetstone agency, about half of them living at the agency.¹⁰ When the Red Cloud agency was removed from the Platte to White River, the Whetstone agency was situated about forty miles farther down the river, to the northeast. The mouth of Big White Clay Creek was about twenty miles still farther down.¹¹ The agent, with the Indians and train of supplies, started on the journey June 1, 1871. The agent who conducted the removal said: "As the selection of a location was left to Spotted Tail and the other chiefs and headmen, I allowed them to guide me to the point chosen—Big White Clay—which was reached on June 24." The name Whetstone was carried over to the new location. The agency was originally "so-called from its former location at the junction of the Whetstone with the Missouri River."¹² The location of the agency was very undesirable, and in Feb-

⁸ *Ibid.*, 1867, pp. 268-9, 226; *ibid.*, 1868—*Report of the Secretary of the Interior*, 1868, p. 690.

⁹ *Ibid.*, 1869, pp. 757, 758.

¹⁰ *Ibid.*, 1870, p. 670.

¹¹ *Report of the Board of Indian Commissioners*, 1874, p. 65; *Report of the Commissioner of Indian Affairs*, 1874, p. 91.

¹² *Ibid.*, 1871, p. 527; *ibid.*, 1872, p. 45.

ruary, 1874, the "Sioux Commission" was appointed to select a new one. On September 5, 1874, it chose a site "at West Beaver Creek, ten miles south from the present agency," and twelve miles south of the boundary between Nebraska and Dakota. According to the report of the agent, dated September 20, 1875, the property was removed "last fall and winter". According to a census taken "after removal" the total number of Indians at the agency was 9,610—7,292 Agency Brulés, 700 Lower Brulés, 429 Northern Brulés, 1,189 Miniconjou and other northern tribes.¹³ The name was changed to Spotted Tail at the beginning of the year 1875. "Camp Sheridan was located at the same time, last year, as this agency, half a mile above us in Beaver Creek"; but it was removed to another place on the creek, a mile below the agency, in the summer of 1875.¹⁴ The post was situated in the northern part of township 33, range 46 west. Spotted Tail resisted removal, it was said, because his band was comfortably situated on Bordeaux Creek about twelve miles west of the Beaver. The commission reported that he was inordinately conceited and selfish.¹⁵

As early as 1874 the board of Indian commissioners insisted that the northern boundary line of Nebraska ought to be run. "A survey", they said, "will probably make it apparent that the Nebraska line runs far north of what the Indians suppose to be the southern boundary of their reservation. It is unfortunate that the treaty of 1868 determines the southern limits of the reservation by an imaginary line."¹⁶

In a joint memorial the Nebraska legislature of 1875 resolved

That we call upon the general government and demand that it shall immediately remove from within the boundaries of the State of Nebraska, the Indian agencies of Red Cloud and Spotted Tail, and the Indians who have been brought into our state and located at and about said agencies without the consent of the state, and, also, that it take steps to abrogate the pretended hunting and other rights claimed to have been given said Indians in the said treaty"—of 1868.¹⁷

On October 27, 1877, about 4,600 Indians started from the Red Cloud agency, near Fort Robinson, to the mouth of Yellow Medicine Creek (now Medicine Creek, in Lyman county, South Dakota), the site of the new agency, at which the caravan arrived on November 25. The Indians established their camp about sixty miles southwest of the agency, not getting any nearer to the Missouri River. The Spotted Tail

¹³ *Ibid.*, 1874, pp. 87, 95, 96; *ibid.*, 1875 p. 254.

¹⁴ *Ibid.*, 1875, p. 254.

¹⁵ *Report of the Board of Indian Commissioners*, 1874, p. 65.

¹⁶ *Ibid.*, pp. 64-65.

¹⁷ *Laws of Nebraska*, 1875, p. 338.

agency was removed in October, 1877, to the old Ponca agency.¹⁸

An act of Congress of June 20, 1878, authorized the appointment of three commissioners "to visit the Red Cloud and Spotted Tail Indians" and "to confer with them about their permanent location . . ."¹⁹ The commission selected a site for the Spotted Tail agency on the western bank of Rosebud Creek, about two miles and a half from its confluence with the South Fork of White River, where the Indians wanted to go, though the commissioners wished to place it on Wounded Knee Creek. The Red Cloud agency was placed on Big White Clay Creek, in the southwestern part of the reservation and about a mile and three-quarters north of the Nebraska boundary. Spotted Tail moved in August, 1878, and Red Cloud in the following winter. The commission recommended that the names of the agencies be changed—Red Cloud to Pine Ridge and Spotted Tail to Rosebud—to avoid the confusion arising from the fact that the old names had been applied to many agencies.²⁰ Whatever the reason for thus dropping the names of these famous chiefs, the incident must have added a pang to the painful surrender of their unrestrained freedom for the little limits of their final reservations. However, each died where, subject to the inexorable force of events against which they had fiercely fought, he had chosen to live. In 1916 there were 7,288 Indians, classed as Oglala Sioux, at the Red Cloud agency, and 5,521, classed as Brulé Sioux, at the Rosebud agency. The case of these two formidable bands of insurgent Indians is typical of the long struggle of the white masters of the red men to push them off their ancestral domains and confine them permanently to comparatively small reservations. The prosecution of this policy involved many bloody battles. The last of great consequence is called the Custer massacre, of 1876. The very last, in 1890, called the battle of Wounded Knee, was also a massacre, but this time of, instead of by, the Indians. It might, very charitably perhaps, be called a blunder.

¹⁸ *Report of the Commissioner of Indian Affairs*, 1877, p. 18; 1878, pp. XXIX, 36, 38, 157.

¹⁹ *U. S. Statutes at Large*, XX, 80, 232.

²⁰ *Report of the Commissioner of Indian Affairs*, 1878, pp. xxviii, 38, 158, 159; *ibid.*, 1879, p. 39; *ibid.*, 1880, p. xxviii. For location of these Sioux agencies see maps *ibid.*, 1878, p. 154; *ibid.*, 1880, frontispiece.

THE OMAHA INDIANS FORTY YEARS AGO

BY JACOB VORE, AGENT

I was nominated by President Grant for agent of the Indians in December, 1875, but through the selfish political influences of the Nebraska senators, Hitchcock and Paddock, my nomination was not confirmed until the following July, I believe. I was from Indiana, and the senators wanted the agent to be a citizen of Nebraska. I received my appointment in August and immediately took charge of the agency. At that time there were about 1,100 Indians in the tribe. I saw at once that to produce any material improvement in their condition and to bring them to a state of comfortable self-support and the adoption of more civilized ideas and habits would require earnest labor and diligent and persevering effort, not only in the office but out of it and amongst the Indians, in order to encourage them through my presence and advice to more active habits of industry and a better knowledge of their own interests. I tried to show them that I felt an interest in working for their good, and I wanted them to be willing to, and to feel an interest in working with me, for by doing so they would be improving their condition and adding to their knowledge of how to do the best for themselves. Many of them appeared to understand and in some measure appreciate my advice; but to accept it gradually in practice, the more intelligent were ready to adopt it.

The chiefs appeared less inclined to adopt habits of civilization, for that would lessen their influence over the tribe, which they held to be of first importance to them, and which even then was becoming precarious. The tribe was divided at that time into two parties, the chiefs' party

and the young men's party; and they were nearly equally divided, but the young men claiming the preponderance in numbers; but as they had no offices, nor officers to nominate or elect, nor any money in the treasury, there was no active strife among them.

To show the industrial progress of the Omaha: I had the threshing of the wheat crop of 1876 to do soon after I took charge at the agency. The crop of that year amounted to 5,000 bushels, the largest, it was said, they ever had raised. The next winter I had 40 harrows made for them against 10 the preceding year. In the spring of 1877 I furnished them 100 double shovel plows, against none before, a good supply of breaking and stirring plows, harness, and a large number of wagons, as well as I can recollect, 75, but it may have been 100, which gave them material encouragement. And in 1878 I made them another liberal issue of implements and wagons. And when the wheat crop of 1877 was threshed it yielded a little more than 12,000 bushels as against 5,000 the preceding year. Their other crops were increased, but not to the same extent. The wheat crop of 1878 reached 20,000 bushels of choice wheat, and they broke up over 350 acres of new prairie with their own pony teams. The agent of the Winnebago told me that in the same year he found it difficult to get his Indians to break 200 acres, although he paid them one dollar per acre and the Indian department had issued them 100 horses, two years before. In 1879 the Omaha had an increase in acreage of wheat, but the season being unfavorable for ripening, the crop was about 1,000 bushels less than the preceding year.

During the three years I was with them the Omaha improved so perceptibly that it became a matter of some notoriety, so that the newspapers, especially the Sioux City papers and the *Omaha Herald*, frequently remarked favorably about it, so that visitors from Omaha and other places in the surrounding country visited the agency to see for themselves, and expressed surprise at the improvements

the Indians had made in a few years in habits of industry and self-dependence, with some advancement in civilized manner of dress. My predecessor had given them encouragement by moderate supplies of implements, as he thought adapted to their present disposition to use them, and otherwise encouraged them by advice and just and honest treatment, and thereby secured their confidence. And when I took charge they were in a condition to improve more rapidly than before, but the change was mostly of gradual growth, and was largely dependent on judicious counsel and the earnestness of example set by the agent and his employees. Where employees are moral and industrious and show an interest in the service they can do much for the advancement of the Indians. But to accomplish success the agent must set and continue the example and oversight. I found that the Indians were pleased when I visited them at their work and said encouraging words to them.

In November, 1876, the time came for the annual annuity in money to be paid them, which had been about \$8,000. Believing as I did that the less they depended on annuities the more they would strive to help themselves and the less they would depend on extraneous assistance, I estimated for \$5,000, and stated my views on the subject to the commissioner of Indian affairs, which were approved, and I was authorized to pay them that amount. The chiefs and a few of their followers complained at being cut down in their annuity expectations, but I told them that was the amount the Indian department allowed me to pay them that year, that the commissioner thought they were getting able to support themselves and they ought to save their money for future needs. They were generally satisfied, or did not complain. The white trader at the agency appeared to be most dissatisfied. After they received their annuity a large number of the Indians determined to go on their annual winter hunt for buffaloes and would not be dissuaded from it, mostly taking their families and about all their subsistence with them. The

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winter proved an unusually severe one, and the buffaloes were getting scarce and further off on account of the more western tribes killing them and driving them farther west, so that the Omaha had very poor success in hunting. And the snow being unusually deep and the weather very cold they found returning so extremely difficult that they could make but little progress. Their supplies becoming exhausted, they were on the border of starvation, and their ponies, in but little better condition than they were themselves, could help them but little. Their condition was such that army officers on the west interposed and induced the Indian department to render them relief. They came home late, after losing two men and two or three children, as I now recollect it. On their return they were impoverished, as they had left nothing at home to supply their wants on their return, and were dependent on those who stayed at home, which was a serious burden to them. Knowing their condition I asked and received authority to issue \$3,000 to the tribe in cash to support them until they could raise a crop, which was the last annuity I paid them. After resting a short time they went to work with a will that was really creditable to them, and raised much the largest crop they had ever raised. That experience put an end to their hunting expeditions.

The Omaha were much annoyed and injured for many years by the Winnebago stealing their ponies. They reported 125 stolen and several were stolen afterward. The Omaha never retaliated in the same way, and the Winnebago tantalized them with being too cowardly to steal from them. They resented the insinuation and said it was not because they were afraid but it was dishonest and mean, and they did not want to do like the Winnebago. But when the last raid was made on the Omaha ponies the Indians came to me and said the stealing must be stopped, that they had stood it as long as they would and if the agents didn't stop it they would take the matter in their own hands and that would make trouble between the tribes

and likely bloodshed. I then went to see the agent to try to induce him to take more prompt action with his Indians in order to prevent a collision, but he told me as he had told the Omaha, that he didn't believe he could stop the stealing, that the ponies, when stolen, were run across the Missouri into Iowa, and that his policemen would not pursue or arrest the thieves, but would rather help them to escape. I then proposed, as his Indians had committed the depredations, that he appeal to the Indian department for means to employ a capable white officer to discover and break up their rendezvous for the sale of the stolen property. He replied that he thought that would be useless as he did not suppose the department would take any notice of his application.

I then appealed to the commissioner of Indian affairs, myself stating the situation and the trouble likely to arise if the Omaha were not protected in their property and asked for a hundred dollars for the purpose of employing a competent white man to serve as a policeman, to pursue and break up the den of pony thieves and their confederates. The commissioner promptly responded, allowing me to use that amount. I at once employed an energetic white man who traced them to the place of concealment and sale of ponies at or near Spirit Lake, Iowa. That broke up pony stealing from the Omaha while I was there, and five years after I visited the agency and was told by the Indians that there had not been a pony stolen since I left.

I have written the above to show the more than usual civilized patience and forbearance of the Omaha under trying circumstances.

I have written in a somewhat fragmentary manner, just as memory has been pleased to come to my aid, with a pretty clear perception of the correctness of what I have written.

The Omaha are peaceable and honestly disposed, with a higher sense of morality, backed by industrious habits, than

any of the tribes I had any acquaintance with, except the Ponca, who were formerly of the same tribe; and between those two tribes there was kept up a friendly correspondence and interchange of presents.

The Omaha chiefs and their tribal relations, which it seemed to be their object and chief purpose to maintain, were the most apparent obstacle to the more rapid advancement of the tribe in civilization and the adoption of the customs of the whites. The chiefs had long considered themselves the heads of their tribe and highly valued their tribal authority and influence and did not willingly relinquish them; indeed but little more so than partisan politicians do their positions and influence in more civilized and intelligent forms of government.

I understood that prior to the time that my predecessor was appointed agent it had been usual for Indian candidates for policemen for the tribe to appeal to the chiefs for their endorsement, and that the candidates who could offer the most liberal bonus in ponies to the chiefs generally secured their endorsements. Whether the aborigines learned that art from civilization or civilization from the aborigines, or whether both classes had the will and inclination inherently I will not attempt to decide.

My predecessor had exerted some influence over many of the Indians by showing them the disadvantages of their tribal habits in comparison with more civilized modes of living, and wherein their conditions would be materially improved by giving up their tribal relations and customs and embracing the white man's ways of living and dressing. And so far as I observed the chiefs did not appear to exert any arbitrary authority over the tribe, nor any encouragement to improve or progress, but by appealing to their ancestral lives and customs with the view of persuading them to maintain their standing and identity as a tribe among the Indian nations, which with civilized peoples would hardly be considered unpatriotic.

But being surrounded by civilized life and customs and

the evidences of plenty and comfort through moderate industry and economy, it only requires patience, perseverance and just dealing, with good example, to convince the tribe, young and old, that civilized life with its inviting advantages is not only much preferable to their former lives, but desirable to strive for. The chiefs said they were too old to change, but the young men could change if they wanted to. But their advancement will depend much on their teachers, on the energy and good judgment of agents and those having the oversight of them. And that requires extra labor and vigilance, and that without any extra compensation and frequently with less than thankfulness, both from the department and interested whites.

In 1885, I believe, about 50,000 acres from the west portion of the Omaha reserve were sold, as I understood for near \$500,000, and the proceeds annually distributed to the tribe, which I have been informed has not operated as an incentive to many of the Indians to work and provide for themselves, but on the contrary seems to have induced a return to their old habits of indolence and dependence.

After the spring of 1877, when the Omaha returned from their unfortunate hunt, until the fall of 1879 when I gave up the agency, I paid no annuity. The first year the chiefs complained some, mostly through the counsel of one of the traders, who I learned was holding counsel with them late at night to induce them to believe that I could get them annuities if I would. When I discovered that, I called on the trader and told him what I had learned and that he was going too far and that if he did not change his course and correct the impressions he had tried to make on the chiefs it would be necessary for him to look out for another trading post.

I was troubled with the chiefs but little afterwards; indeed, considering that I was as firm as I was, although I aimed to treat them respectfully and becomingly, I thought it was remarkable that I appeared to have their confidence

and good will as I did; but I found they respected that spirit.

To illustrate their feeling I may say that when I was about to retire from the agency I called a council of the Indians at which the chiefs were all present and on my informing them that I was about to leave them the head chief addressed me about as follows:

Major, we are sorry that you are going to leave us, we want you to stay with us because we have got to know your ways. For a while after you was agent we did not understand your ways. Your ways were different from other agents' ways, and we did not understand them for a good while, and we didn't like you very well; but when we got to understand your ways we found they were good ways, and now we like them and want to follow your ways, and we are afraid if another agent comes his ways will not be like your ways and our young people will go back like the Winnebago.

Several of the other chiefs expressed the same feeling. In conclusion, I may say that I had no trouble with the Indians. I never enjoyed myself more than when I was faithfully laboring for the improvement and the interests of the Indians.

EXPLANATORY ADDENDUM BY THE EDITOR

Mr. Vore, a member of a Society of Friends, assumed the office on September 21, 1876, succeeding T. T. Gillingham, also a Friend. How Indian agents came to be chosen from these particular people is related in the report of the commissioner of Indian affairs for 1872, as follows:

For the year preceding the passage of the act of July 15, 1870, all superintendents of Indian affairs and Indian agents, with the exception of those for the States of Kansas and Nebraska, were officers of the Army assigned to duty under the orders of the Indian Office. In the two states named, however, the superintendents of Indian affairs and Indian agents had been for somewhat more than a year appointed by the Executive upon the recommendation of the two Societies of Friends, the appointees being in all cases recognized members of one or the other of those religious bodies, and, while duly subordinate and responsible in all official respects to the Indian Office, maintaining close correspondence with committees of their respective societies appointed for that purpose. So fortunate were the results of this system of appointment in Kansas and Nebraska considered, that when, under the provisions of the 18th section of the act of July 15, 1870, it became necessary to relieve officers of the Army from this service, it was decided by the Executive that all the agencies thus vacated in the re-

maining States and the Territories should be filled by appointment upon the recommendation of some religious body; and to this end the agencies were, so to speak, apportioned among the prominent denominational associations of the country, or the missionary societies representing such denominational views; and these associations or societies were thereupon requested to place themselves in communication with the Department of the Interior, to make nominations to the position of agent whenever a vacancy should occur within the list of the agencies assigned them respectively, and in and through this extra-official relationship to assume charge of the intellectual and moral education of the Indians thus brought within the reach of their influence. The reason formally announced for this somewhat anomalous order of appointment was the desirableness of securing harmony between agents and missionaries, complaints having become general that, in the frequent change of agents, no missionary efforts could long be carried on at any specified agency without encountering, sooner or later, from some agent of different religious views or of no religious views, a degree of opposition or persecution which would necessarily extinguish such missionary enterprise and even destroy the fruits of past labors. When it is remembered that efforts of this kind must, to achieve valuable results, be continued for many years, confidence being a plant of slow growth in savage breasts, and the hope of the missionary being almost universally founded on the education of the rising generation, while, in fact, Indian agents were under the old political regime changed every few months, or every two or three years at the longest, it will readily be seen that the chances of missionary enterprises being cut off in the flower were far greater than the chances of continuance and success. Such indeed had been the general history of these efforts among the Indians of North America, and it may fairly be said that almost the only enterprises of this kind which have secured a permanent footing are those which preceded the Government control of the Indians, and which had founded themselves on the confidence and sympathies of the natives too strongly to be shaken by official hostility or neglect.

While, however, the importance of securing harmony of feeling and concert of action between the agents of the Government and the missionaries at the several agencies, in the matter of the moral and religious advancement of the Indians, was the single reason formally given for placing the nominations to Indian agencies in the hands of the denominational societies, it is, perhaps, not improper to say that the Executive was also influenced by the consideration that the general character of the Indian service might be distinctly improved by taking the nomination to the office of agent out of the domain of politics and placing it where no motives but those of disinterested benevolence could be presumed to prevail.

The Hicksite Friends have in their charge 6 agencies, with 6,598 Indians; Orthodox Friends, 10 agencies, with 17,724 Indians; Baptists, 5 agencies, with 40,800 Indians; Presbyterians, 9 agencies, with 38,069 Indians; Christians, 2 agencies, with 8,287 Indians; Methodists, 14 agencies, with 54,473 Indians; Catholics, 7 agencies, with 17,856 Indians; Reformed Dutch, 5 agencies, with 8,118 Indians; Congregationalist, 3 agencies, with 14,476 Indians; Episcopalians, 8 agencies, with 26,929 Indians; the American Board of Commissioners for Foreign Missions, 1 agency, with 1,496 Indians; Unitarians, 2 agencies, with 3,800 Indians; Lutherans, 1 agency, with 273 Indians.¹

¹ *Report of the Secretary of the Interior*, 1872, pp. 460, 461, 462.

Section 18 of the act of 1870 adverted to prohibited officers of the army from holding any civil office.²

The commissioner of Indian affairs, in his report for 1876,³ apologized for the shortcoming of the service as follows:

The great want of the Indian service has always been thoroughly competent agents. The President has sought to secure proper persons for these important offices by inviting the several religious organizations, through their constituted authorities, to nominate to him men for whose ability, character, and conduct they are willing to vouch. I believe the churches have endeavored to perform this duty faithfully, and to a fair degree have succeeded; but they experience great difficulty in inducing persons possessed of the requisite qualifications to accept these positions. When it is considered that these men must take their families far into the wilderness, cut themselves off from civilization with its comforts and attractions, deprive their children of the advantages of education, live lives of anxiety and toil, give bonds for great sums of money, be held responsible in some instances for the expenditure of hundreds of thousands of dollars a year, and subject themselves to ever-ready suspicion, detraction, and calumny, for a compensation less than that paid to a third-class clerk in Washington, or to a village postmaster, it is not strange that able, upright, thoroughly competent men hesitate, and decline to accept the position of an Indian agent, or if they accept, resign the position after a short trial.

Section 4 of the act of Congress of April 10, 1869, making appropriations for the expense of the Indian department, authorized the president to organize a board of commissioners of not more than ten persons, "who may, under his direction, exercise joint control with the Secretary of the Interior over the disbursement of the appropriations made by this act or any part thereof that the President may designate. . . ."⁴ President Grant promulgated regulations for the guidance of the board June 3, 1869.⁵ This board is still in existence. It at once assumed authority under the act creating it to farm out the appointment of Indian agents to the several religious organizations. The northern superintendency, comprising the six agencies in Nebraska, were allotted to the Hicksite denomination of the Society of Friends, who acted so promptly, perhaps it should be said, with such avidity, that within a very few months all the Gentile agents and the superintendent had been superseded by their own sectaries.⁶

But this strange recrudescence of theocracy was of course short-lived, and by 1881 a Gentile had succeeded to the superintendency, and all of the sectarian agents but one had been ousted by unregenerate politicians. This notable exception

² *U. S. Statutes at Large*, XVI, p. 319.

³ Page iv.

⁴ *U. S. Statutes at Large*, XVI, p. 40.

⁵ *Report of the Secretary of the Interior*, 1869, p. 486.

⁶ *Report of the Commissioner of Indian Affairs*, 1869, p. 5.

was Isaiah Lightner of the Santee agency. He successfully withstood Republican besiegers but was finally overcome soon after the change to a democratic administration in 1885.

In his first report—for 1877—Carl Schurz, secretary of the interior under the Hayes administration, sharply criticized the inefficiency and dishonesty of the sectarian organization of the Indian bureau, and in his second report he said: "The Indian service has been reorganized in several of its branches. It was found necessary to remove a number of agents on account of improper practices or lack of business efficiency, and great care has been taken in filling their places with new men."⁷ These statements by Mr. Schurz are entitled to credence.

In the report of the board of Indian commissioners for 1881⁸ it appears that "Gen. Grant was led to ask for and to secure the legislation that created this board"; that without any special conference with the religious bodies some member of the board, perhaps its secretary, Vincent Colyer, proposed to divide up the agencies among the different denominations; that Colyer had much to do with the original assignment of agencies; that the secretaries of some of the religious societies were summoned to Washington where it was agreed that the agents should be nominated by those bodies; that the president and the secretary of the interior (Jacob D. Cox of Ohio), who were present at the meeting, there asked to be relieved from the pressure of politicians: "So it went on without any special rule, and since that date most of the agents have been nominated by these religious bodies"; that the Hayes administration cooled the scheme; that under Garfield's administration no agents were nominated by religious societies; and that Arthur's administration gave the theocracy its quietus. At the Mohonk Lake conference of "friends of Indian civilization", in October, 1885, it was sadly said that "The present system allows the selection of an agent with no reference to the Indian whatever, but to political considerations and political rewards."⁹

Local newspapers had long been charging the administration of the Nebraska agencies with speculation and incompetency under the purely spoils system which preceded the Quaker regime. The change doubtless brought some improvement, and the superior capacity, both mental and moral, of Secretary Schurz, still more.

By the treaty between the United States and the Omaha Indians, dated March 16, 1854, in consideration of the cession

⁷ *Report of the Secretary of the Interior*, 1877, p. XII; 1878, pt. I, p. iv.

⁸ Page 87.

⁹ *Report of the Secretary of the Interior*, 1885, I, 823.

by the Indians of all their lands in Nebraska except their reservation, it was provided that they should be paid forty thousand dollars annually for three years, thirty thousand dollars annually for ten years next succeeding the three years, twenty thousand dollars annually for the fifteen years next succeeding the ten years, and ten thousand dollars annually for the term of twelve years next succeeding the fifteen years. The twenty thousand dollars per annum was being paid while Mr. Vore was agent. It was discretionary with the department of Indian affairs to pay these installments all in money or partly in goods or other benefits.

Under the acts of Congress of August 7, 1882, and March 3, 1885, the 50,157.27 acres lying west of the right of way of the Sioux City and Nebraska Railroad Company were sold in 1885. The appraised value of this part of the reservation so sold was \$512,670.24.

EARLIEST SETTLERS IN RICHARDSON COUNTY

BY SARAH E. (CROOK) WILHITE

B. F. Leachman, the first native white child of Richardson county, was born August 18, 1855. The first death in the county was that of Mrs. Purgett in February, 1855. The first recorded marriage was between Wilson M. Maddox and Miss Margaret Miller, which occurred in October, 1855. Mrs. Maddox resides in Falls City.

The first minister of the gospel, Rev. Hart (Methodist), came in the summer of 1855. Mrs. Samuels, a one-armed lady, taught the first school, in 1855, in a small log hut near Muddy Creek. The boys chopped the wood and built the fires, and the girls swept the cabin and carried water from a spring nearby. The school children's dinners consisted principally of corn bread and bacon. Wheat flour in those days was a luxury, and some biscuits, made from a sack of it, donated by a family in our neighborhood, was long remembered by us children as a great treat. The first physician in the county was Mrs. Sallie Dodge, as she was familiarly called. Uncle Jesse Crook came in August, 1854, and squatted on a claim. His wife and three small children, with a small colony from Tennessee, arrived at Muddy Creek on the 17th day of April, 1855, crossing the Missouri River at sundown, at a place known as St. Stephens. The Crook household goods were in a wagon drawn by oxen, and in driving off the ferryboat the wagon upset, throwing most of the goods into the river. We stopped over night at St. Stephens, and next day, April 17, 1855, journeyed to our new home, a mile and a half northeast from the place now occupied by Falls City. Our cabin had one door, a stick and clay chimney, completed only about half way up one

end, and was without windows or other improvements. The men had to sleep in the wagons, and the cooking was done on the outside by a campfire. There was nothing to be seen but wolves, Indians and the vast prairies, and our only music was the howling of wolves. The Indians were very fond of coming to our cabin and watching us at our work.

Where we crossed the Muddy to our new home the banks were so steep that it was necessary to fasten ropes to the end of the wagons so that by holding onto them the men kept the wagons from tipping forward on the oxen. The first Fourth of July celebration in Richardson county was held at Salem on the 3d, 1856, as the fourth came on Sunday, and the second was at Rulo on the 5th of the same month. The first Fourth of July celebration at Falls City was in 1857, General Jim Lane was the orator of the day, Major Burbank had the only confectionery stand, and the music of the occasion was made solely by a fife and a drum. The exercises, including dinner, took place under a brush arbor. Mrs. Jesse Crook and other pioneer women, most of whom have long since passed to the great beyond, prepared the dinner. The great feature of the celebration was a war dance by the Indians for which we gave them dinner.

The Indians were very friendly. Their reservation was about three miles south of Falls City and was a very interesting place for the whites to visit. For years we had no church houses, and our religious services were held in the groves on the banks of the streams and in the cabins of the settlers. The people had a high regard for these services. I saw men, women and children attend them in their bare feet. The first church building (Methodist) used exclusively for church purposes in the county was erected in Falls City in 1867 and dedicated the same year. Most of our provisions, such as sugar, coffee, flour, etc., was hauled in wagons from St. Joseph, Mo., so that we were often short of some kind of food. I knew one family that lived for

weeks in the winter of 1855-56 on nothing but corn bread and coffee made of corn meal; and another family had nothing to eat for weeks but parched corn. The father of this family went to Missouri, over twenty miles, through sleet and snow two or more feet deep, and returned home with only a ham. The town of Archer was laid out from public land in the summer of 1855. It was situated on the east side of Muddy Creek about three miles northeast of Falls City, near the claim of Judge Miller, who had moved thereon the same summer. Judge Miller's daughter, Margaret, was married to Wilson M. Maddox (now deceased) at her father's house in October, 1855.

The town of Archer consisted of one hotel, owned by Judge Miller, two general stores, kept by Abel D. Kirk and John F. Welty, one blacksmith shop, four or five dwelling houses, and two lawyers, William Loan and Abel D. Kirk. The first county officers were Frank L. Goldsberry, county clerk; Louis Mesplais, county treasurer; ——— McMullen, sheriff; Judge Miller, probate judge; and Jesse Crook, surveyor. The town site of Archer was abandoned in the year 1857, because the government survey in the allotment of land to the Indians included it inside the half-breed line.¹ Isaac Crook, brother of Jesse Crook, settled

¹ The initials of McMullen's Christian name are E. G., and Miller's Christian name was John C. Archer derived its name from its founder. The change of the western boundary of the half-breed tract was the result of a resurvey made in 1857 which left Archer about three-quarters of a mile within the reservation, but the original line was reestablished by act of Congress June 12, 1858. See Watkins, *History of Nebraska*, I, 378, and articles on Archer and the half-breed tract by Isham Reavis, republished in the *Sunday State Journal*, February 7 and February 28, 1909.

Mrs. Wilhite, author of this paper, and her husband, Judge J. R. Wilhite, live at Falls City. According to *Records of Nebraska Territory*, in December, 1854, Governor Cuming appointed Christian Bobst judge of probate of Richardson county, Robert T. Archer, for whom the town of Archer was named, sheriff, and Nell J. Sharp county clerk. In 1855 Governor Izard appointed county officers as follows: March 16, Neil Johnson Sharp register of deeds; May 31, J. C. Lincoln

here with his family on or about April 15, 1856, and here his children grew to maturity.

Fighting prairie fires was one of the worst pioneer hardships. Very often the settlers would have to turn out for this purpose day and night; and often homes, crops and live stock were consumed.

David Dorrington, wife and children settled at Falls City in September, 1857, where they built their dwelling house and made other valuable improvements. They lived here until death, and their children who still live here are William E. Dorrington, Mrs. Annie (Dorrington) Reavis, wife of Judge Isham Reavis, and Kittie L. (Dorrington) Towle, wife of Edwin S. Towle. William E. Dorrington is the oldest resident in point of time now living in Falls City. David Dorrington and Mother Dorrington, his wife, died long ago. Squire Dorrington, as he was familiarly called, was mayor, justice of the peace and member of the city council and of the school board.

treasurer; August 3, A. D. Kirk surveyor; in November, J. C. Lincoln register of deeds, E. G. McMullen sheriff, John C. Miller judge of probate; December 27, Ambrose Shelley treasurer. On November 6, 1855, the first election in the territory of county officers—five in number—was held. According to the record above named, those chosen in Richardson county are as follows: John C. Miller judge of probate, Ambrose Shelley treasurer, J. C. Lincoln register of deeds, E. C. McMullen sheriff, Jesse Crook surveyor. Frank L. Goldsberry, county clerk, is omitted. According to local historians, Christian Bobst was the first actual judge of probate, 1854; E. G. McMullen first sheriff, 1857; Frank L. Goldsberry first clerk, 1855; Isaac Crook first treasurer, 1857; J. J. Leabo first surveyor, 1857. But pioneer records as well as memories are often infirm.—Ep.

SOME INDIAN PLACE NAMES IN NEBRASKA¹

BY MELVIN R. GILMORE

This paper briefly discusses some place names of Nebraska which are derived, directly or indirectly, from the aboriginal inhabitants and some of doubtful origin which are supposed to be derived from them. Some of these names, either true to form or more or less mutilated, have been transferred to our own nomenclature—some translated, some mistranslated, some misapplied. Some of these commemorative place names were given to the tribes by themselves, others by their white successors. Some of these names are nondescript, and I have found no satisfactory explanation for them.

I shall not here treat in detail the place names still employed by the tribes which formerly occupied the region. It is sufficient to say that each tribe possesses an ample nomenclature, even providing for all the small streams. Their place names disclose a wealth of legendary and mythologic lore which research has scarcely touched. Moreover, they indicate a world of aboriginal economics and industries which is wholly unexplored.

Originally all names of persons or of places in all nations had a meaning, and generally a special fitness of application. This statement applies equally to the nomenclature of the aboriginal Americans and to that of our European races. Names are historic monuments, sometimes significant and worthy, sometimes obscure, trivial or frivolous; but they always have their story to tell.

Washington Irving has so well expressed the poverty of our geographic nomenclature, at the same time calling

¹A paper read before the Association of American Geographers, Chicago, December 29, 1914.

attention to a comparatively little-used but wonderfully fertile resource for enriching the same, that I shall here quote his words. He says, "and here we cannot but pause to lament the stupid, commonplace, and often ribald names entailed upon the rivers and other features of the great west, by traders and settlers. As the aboriginal tribes of these magnificent regions are still in existence, the Indian names might easily be recovered; which, besides being in general more sonorous and musical, would remain mementoes of the primitive lords of the soil, of whom in a little while scarce any traces will be left. Indeed, it is to be wished that the whole of our country could be rescued, as much as possible, from the wretched nomenclature inflicted upon it, by ignorant and vulgar minds; and this might be done, in a great degree, by restoring the Indian names, wherever significant and euphonious."

Nebraska contained, either partially or wholly within its borders, the following tribes: In the northwest were the Teton Dakota; along the lower course of the Niobrara River, on the north side, were the Ponca; in the northeast, from the Niobrara southward to the Platte River, were the Omaha; south of the Platte River, in the southeast, were the Oto; next to these were the Iowa, partly on the east side of the Missouri River in what is now the state of Iowa, and partly west of the Missouri in what is now the extreme southeast of Nebraska. South of the Oto were the Kansa, from which tribe the state of Kansas is named. The Kansa domain extended only a little way within what is now the south boundary of Nebraska. All these tribes are of the Siouan stock, hence their languages are cognate, although mutually unintelligible to each other. In the middle part of the state from north to south lay the domain of the Pawnee. This was a nation consisting of four tribes of the Caddoan stock. The structure of their language is distinctly different from that of the Sioux nation. In southwest Nebraska and eastern Colorado were the Cheyenne

and Arapaho tribes, of the great Algonquian linguistic stock.

The tribal names of places are usually descriptive of some physical feature or commemorative of some person or event in the tribal history, or they carry the idea of some legendary or mythologic relation. Each tribe had its own nomenclature for all the region with which it was acquainted. Thus any given stream, lake or hill may have six or seven different names among as many different tribes. It may be that the same notable feature is the motive of the name by which a place is called by two or more tribes, but as the languages differ the names will be quite different in form.

When taken serially, and considered in relation to traditions and other known facts, place names often show lines of migrations of tribes. For example, in northeast Nebraska there is a small stream marked on the maps as Iowa Creek, although when white men came into the region the Iowa were one hundred and fifty or two hundred miles farther down the Missouri River. The name of the creek is derived from that by which the Omaha call it, namely, Mah^ouda-waa-i-te. Mah^ouda is the Omaha name of the Iowa tribe, and their name of the creek means "Creek-where-the-Iowa-planted". According to the traditions of the Iowa, Omaha, and Ponca, these tribes, in the order named, migrated from farther up the Missouri River into the region where they were found at the advent of white men, the Iowa farthest down, and each tribe afterward occupying, successively, lower reaches of the river. Likewise there is a place on the Dismal River, in central western Nebraska, which the Omaha call Padoⁿka-naⁿsa-gah^o-thaⁿ, The (place) where-the-Padoⁿka-built-a-fort. When white men came into the region the Comanche, or Padoⁿka as they are called by the Omaha, were much farther south, but from several sources we know that they were formerly in the western part of the sand-hills region. This Omaha place name is corroborative of the fact.

Names invite and reward careful study and exposition, for they are records of the past and may throw much light on the manner and means of life and cast of thought of the people, with some indication of the time of their occupancy. But if this research is to be accomplished it must be done very soon, before the death of all the old people of the tribes; for they alone can give certain information. The young people have scanty knowledge of the tribal lore, because they have generally been absent all the years of their youth, attending schools of European culture, from which they return imbued with alien interests and cares. When the old people understand my purpose in seeking such information from them they often become eagerly interested and very painstakingly impart their knowledge to me. When they are uncertain they will make no statement for fear of error. An old man of the Omaha tribe said to me: "Kageha" (friend), "I am glad to tell you all that I know, for the time will come when the Omaha will be walking altogether in the white man's way. We old people shall be gone. Unless you write down these things now, while we can tell them to you, the knowledge will be lost, and our descendants will not know what sort of people their ancestors were, how they lived, or what they accomplished."

Among the names which have been adopted into our nomenclature I mention the following: A river in northern Nebraska retains its Dakota name, Keya Paha, which means Turtle Hill.² Leshara is a town in Saunders county,

² The act of Congress March 2, 1861, for the organization of the territory of Dakota calls this stream "the Keha Paha or Turtle Hill River . . ." *U. S. Statutes at Large*, XII, 239. An act of March 3, 1865, provided for the construction of a road "from Niobrara to the mouth of Turtle Hill River," and to Virginia City, "with a branch from the mouth of Turtle Hill River . . . to Omaha." *Ibid.*, XIII, 516. As late as December 21, 1878, the *Oakdale Pen and Plow* calls the stream Turtle Creek. Leach, *History of Antelope County*, p. 87. Section 20 of the organic act for Dakota provides, "That, the river heretofore known as the 'River Aux Jacques', or 'James River', shall here-

situated on the site of a former Pawnee village which was occupied by two tribes of the Pawnee nation, namely Kitkehaki and Chaui. Pita Leshara (Man Chief) was chief of the Chaui, and a part of his name has been taken for the name of the present town. Minichaduza Creek, in northern Nebraska, carries its Dakota name, which is aptly descriptive of the stream; mini is the Dakota word for water, chaduza is the word for swift.

Nebraska, the name of the state, is an approximation to the Omaha name of its largest river, which we now call by the French translation of the Omaha name, Ni-bthaska; ni, water; bthaska, flat.

Niobrara, the name of a river in the northern part of the state, is likewise an approximation to its Omaha name, Ni-ubthatka, meaning spreading river. This is descriptive of its widening over sandbars in its lower course. Ni means water and bthatka, spreading. The Dakota name of this river, Mini-tanka Wakpa, carries the same idea. But the Pawnee name, Kits'kakis, means Rapid River; kitsu, water; kakis, rapid or swift. Both these names Spreading River and Rapid River or Running Water, are vividly descriptive of this stream.

The city of Omaha bears the name of the tribe within whose former domain it is situated. Pohocco is the name of a precinct in Saunders county. It is a rather mutilated form of the Pawnee name of a prominent hill in that vicinity, on the Platte River, but outside the limits of that precinct. The Pawnee name of the hill is Pahuk, meaning headland or promontory. It is the site of the principal myth of the Pawnee mythology. I identified this site in

after he called the Dakota river." But this scintillation of fine taste was ineffectual. In derogation of the law, this river is called "James or Dakota" on a map issued from the general land office in 1912, and it is so called in the Rand & McNally Atlas. In Crane's Atlas Dakota is put first. Thus, with doubtful propriety, the awkward Indian name persisted, while there seems to have been a conspiracy to do away with the musical and otherwise appropriate Indian name of the Dakota river.—Ed.

the year 1914 by taking an old man of the Pawnee tribe upon the ground and using various tests.

Of translated names we have the following: Black Bird Creek, in Thurston county, Nebraska, was named for a chief of the Omaha tribe who died in that vicinity about the beginning of the nineteenth century. Birdwood, the name of a creek tributary to the North Platte River, is a literal translation of its Dakota name, which is Ziⁿtka-chaⁿ Wakpala. Ziⁿtka-chaⁿ is the Dakota name of the shrub *Amorpha fruticosa*,³ which grows abundantly along the creek. Calamus River is a translation of the Dakota name Siⁿkpe-ta-wote Wakpa. Wakpa is the Dakota name for river. Siⁿkpe-ta-wote (food of the muskrat) is the Dakota name of calamus or sweet flag. Lodge Pole Creek is a literal translation of the Dakota name, Tushu Wakpala. Long Pine Creek is a translation of either its Dakota name, Wazi-hoⁿska Wakpala, or of its Omaha name, Mazi-snedé Wachishka. Wazi is the Dakota word and mazi the Omaha word for pine; hoⁿska is the Dakota word and snede the Omaha word for long.

Examples of what I may call mistranslated names are Pumpkinseed Creek and Red Willow Creek. Red Willow county is named from the creek. The Dakota name of Pumpkinseed Creek is Wagamuⁿ Wakpala, or Wagamuⁿ-pezhihuta Wakpala. Wagamuⁿ is the Dakota word for pumpkin and here refers to the wild pumpkin or gourd which grows there. Pezhihuta means medicine. The root of this wild gourd is used medicinally. A correct rendering of the Dakota name then would be Wild Gourd Creek, or Wild Gourd-medicine Creek. Red Willow Creek is a bungled translation of its Dakota name, which is Chaⁿ-shasha Wakpala. Chaⁿ-shasha is the Dakota name of the shrub, *Cornus amomum*, or red dogwood, which is abundant on that stream.

³ Commonly called indigo flower. Birdwood Creek flows into the North Platte River at a point in the northwestern part of Lincoln county directly north of the town of O'Fallon.—Ep.

The following names of towns in Nebraska are misapplied, as they belong to various tribes distant from this state: Cayuga, Chautauqua, and Tonawanda are Iroquois names from New York; Menominee, the name of an Algonquian tribe of Wisconsin; Osceola, the name of a chief of the Seminoles of Florida; Tecumseh, the name of a chief of the Shawnee of Ohio; Waco, the name of a tribe in Texas.

Names of towns in the state commemorating Nebraska tribes by their own names for themselves are Dakota, Ogallala, Omaha, and Ponca.

In the county names of Cheyenne, Otoe, Pawnee, and Sioux certain tribes are commemorated by our names for them, not their own names for themselves. Arikaree River,⁴ Loup River, Missouri River, and Republican River also commemorate tribes by white men's names for them. Loup River is so called because upon it were situated the villages of the Skidi or Wolf tribe of the Pawnee. The French explorers translated the name into French when they mapped the country, and in that form it has persisted. Missouri was the name given by the French, as they learned it from the Illinois, to a Siouan tribe on the lower course of the Missouri River. This tribe called themselves Niu-tatshi. But the name by which the Illinois called them was adopted by the French and by them applied also to the river. But each tribe acquainted with the river has its own name for it. For example, the Omaha call it Smoke River. This is descriptive, as will appear from the following incident: I was once riding with an Omaha who was going in his wagon toward the Missouri River. As we approached it, while yet invisible below the horizon of hills, we could see thin, trailing white clouds of fine sand, blown by the summer south wind from the bars. Pointing to the drifting sand-clouds, in appearance like wreaths of smoke,

⁴ The middle fork of the Republican. It unites with the south fork in the southeastern part of Dundy county. The name of the tribe is properly spelled Arikara.—Ed.

my Omaha friend said: "Now you see why we call that river Nishuda." Ni is the Omaha word for water or stream of water, shuda is the word for smoke. The Dakota name of this river, Minishoshe, is also descriptive: mini is the Dakota word for water, shoshe, muddy. The Pawnee name of this river is also descriptive, but under another aspect, as it impressed the Indian mind. The Pawnee name is Kits' Paruksti; Kits' from kitsu, water, and paruksti, wonderful.

The Republican River, in southern Nebraska, is so named from being the habitat of the Pawnee Republic or Republican Pawnee, a name applied by white men to this tribe because of their own form of government.⁵ They call themselves Kitkahak.

Sioux county was so-called from the appellation given to the Sioux Indians by the French. It is a contraction of the Gallicized form of the name given to them by a tribe of their Algonquian enemies.

Sometimes European names are mistakenly applied to places in the belief that they are Indian because they have been borne by Indians or mixed bloods. Such a name is Fontenelle. Lucien Fontenelle, a Frenchman, came to America, entered into the fur trade, and married into the Omaha tribe. Logan Fontenelle, born of this union, afterward became quite prominent in the affairs of the tribe and was well known to white people in connection with the negotiation of the Omaha tribal treaty of 1854. In consequence the name Fontanelle was given to a town founded at that time. Recently a million dollar hotel was built in the city of Omaha. The managers wished to give it an "Indian name", so they used the name of this French half-breed. A great natural park near the city of Omaha has been projected, and although the park itself is not yet

⁵ There has been much speculation resulting in contradictory conclusions about the origin of this name. The most plausible explanation I have been able to find, as yet, is that given by Dr. Gilmore.—Ed.

established, its promoters have hastened to provide for it a "Nebraska Indian name", and have chosen that of the same French half-breed. The name of a small river in northeastern Nebraska also commemorates this French-Omaha half-breed. It is called Logan River from his given name. The Omaha tribe calls this river by a descriptive name, Ni-taspaⁿ-batê-ke; ni, the Omaha word for water; taspaé the name of *Crataegus mollis*, the red hawthorn; batⁿ, the word for clump or thicket. The Omaha name, then, indicates the abundant growth of red haws along its course.

The following list of names of towns in Nebraska I have called nondescript because I have found no satisfactory explanation of any of them. Some of them may be Indian names, but if so they are misplaced. None of them have any relation to any Indians of Nebraska. The list includes Kowanda, Monowi, Naponee, Negunda, Nantas-
ket, Oconee, Oconto, Tekamah, Wahoo, Wauneta, Winne-
toon.

At present there is a lamentable dearth of certain and reliable information on aboriginal place names. As examples of the futility of much of the matter which is offered on this subject I quote from no less a publication than Bulletin 258 of the U. S. Geological Survey, "The Origin of Certain Place Names in the United States". This publication says of the name Niobrara: "An Indian word meaning 'broad water' or 'running water.'" I have already in this paper given the true origin and etymology of the name. Bulletin 258 says of the name Wahoo, a town in Nebraska: "An Indian word said to mean a species of elm." I have heretofore mentioned this name in my list of nondescripts. There is nothing like the word in the language of any tribe in Nebraska. Of the town of Wauneta the bulletin mentioned says: "An Indian word meaning winter camp." These are flagrant examples, not of inadequacy only, but of utter futility of pretended explanation.

In the first place, the use of the expression "Indian word meaning thus and so" is just as if a Chinese geographer in writing for his people an explanation of place names in Europe should say "Tipperary, Newcastle, Stockholm, Flanders, Hamburg, Bordeaux, Athens, Odessa, Nizhni Novgorod, Przemysl, Damascus, and Jerusalem are Caucasian words with such and such meanings." To use the expression "Caucasian word" or "Caucasian language" is no more ridiculous than to speak of the "Indian language", for there are no less than two hundred Indian languages of more than fifty different linguistic stocks within the bounds of the United States.

Here is a field of research which is most interesting in itself, and the need and usefulness of cultivating it are obvious. But the task requires serious purpose and scientific method. Work of this sort, to have any value, demands careful attention to philologic and ethnographic questions.

BOHEMIANS IN NEBRASKA

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EARLIEST COMERS TO AMERICA

In the very heart of Europe, forming a mountain-girt corner of northwestern Austria, lies the lovely little country of Bohemia. Since the fifth century it has been continuously occupied by the Czechs, named after the patriarch who led them thither from the parental Slavonic home in western Russia. Despite the frequent misunderstanding of the term Bohemian by the ignorant or thoughtless, the Czechs or Bohemians are not nomads or gypsies, but a simple agricultural people attached to the land which has been "home" to them for fifteen hundred years. The name Bohemia was passed over to the country from the Boii, a Celtic tribe, who occupied the land long before the coming of the Czechs. The name Boii was corrupted to Bojohemum and then to Bohemian—a continuous cause of misunderstanding, because so many know the name only as applied to wandering tribes or Latin Quarter experiences in Paris.

It was but a short time after the Pilgrims had found refuge in Massachusetts that the first Bohemian came to America. Augustine Herman, a wealthy nobleman, was compelled to flee his own country because he was of Protestant faith. The outcome of the battle of White Mountain, in November, 1620, at the beginning of the Thirty Years' War, had been disastrous to the non-Catholic party. Herman came first to New York, then to Maryland, where Lord Baltimore gave him an immense tract of land as a reward for surveying his own possessions and making the first map

of the colony. Even as early as 1633, Herman had become prominent in the public affairs of the new country, though ever loyally proud of his Bohemian origin.

Frederick Phillips, or Filips, of Yonkers, was the second Bohemian to come to America. These two, Herman and Phillips, became the ancestors of such men as the Bayards, Sargents, and John Jay, the first chief justice of the United States supreme court. Worthy vanguards, indeed, of the great peaceful army that has come since their time nearly three hundred years ago.

In this "mixing bowl of nations" it will require the most skillful alchemy to preserve the pure gold, not alone of the native stock but of the stranger within our gates. It behooves us, then, to know well the character of the components which are daily cast into the American mixing bowl.

BOHEMIAN POPULATION AND ITS DISTRIBUTION

In 1910 the total population of Nebraska was 1,192,214. In the same year, the population of foreign birth and foreign parentage amounted to 530,015—almost half the total. Of this foreign population, 62,810, or thirteen per cent, were either born in, or of parents who came from, Austria. The question is, are all, or nearly all, of these "Austrians" from Bohemia?

The data of the United States census bulletins regarding the nationality of inhabitants are grievously defective. To merely state the country of birth and not the nationality is just as illuminating as to insist that every coin you shake out of a toy bank is a cent even if it is a silver dime or a gold eagle. For instance, it appears by the bulletins that 24,885 residents of Nebraska were born in Russia, from which it is erroneously inferred that there were that many Russians in the state, when, in fact, the great majority of persons who emigrated hither from Russia are really Germans and have no Slavic blood whatsoever. Just so with similar statements concerning Austria. There are

seventeen states and more than that number of nationalities in Austria, each with widely differing characteristics. In the general census foreigners are classified by the language they speak, by their nationality, a far truer description.

Of the 539,392 Bohemians according to the census of 1910, it is probably safe to say that one-eighth reside in Nebraska. This estimate is based on a process of elimination, according to the claims of each of the other more important Bohemian communities in this country. The complete census when issued will give this in detail. Every year from 300 to 500 Bohemian immigrants arriving at various ports give Nebraska as their destination. The immigration figures since 1910 warrant us to regard 100,000 as a fair estimate of Nebraska's Bohemian population.¹

¹The foregoing statement of the total population of Nebraska, of the total foreign population and the number of Bohemians is from the U. S. Census of 1910. The census bureau estimated the population of the state in 1916 at 1,250,000. The total foreign population in 1910 included all persons of foreign birth, and those born in the United States one or both of whose parents were of foreign birth. The 539,392 Bohemians, classed in the census as Bohemians and Moravians, comprised 282,738 of foreign birth and 310,654 born in the United States but of foreign or mixed parentage. Moravia, an Austrian province, lies contiguous to Bohemia on the east. Its population in 1900 was 2,435,081, 71.36 per cent of whom were Slavs and "scarcely distinguishable from their Bohemian neighbors"; but the Bohemians are called Czechs, while the Slavs of Moravia and West Hungary are called Moravians and Slovaks. So, while the Bohemians and Moravians are very much alike, the census does not disclose how many of each are comprised in the total of 539,392. They came to the United States from thirty-five nations and provinces of all the continents, but mainly as follows: from Austria, 515,183; Germany, 17,382; Hungary, 2,868; Russia, 1,694; Canada, 236.

In the distribution of foreign population by states, the number of Bohemians and Moravians is not given, only the total number of each nationality. Thus Nebraska had of Austrians, 62,810; Hungarians, 2,142; Germans, 201,713. As is shown above, there were only 17,382 Bohemians and Moravians from Germany and 2,868 from Hungary to be distributed among all the states; and though most of the Austrians in Nebraska are doubtless Bohemians their total number, 62,810, falls far below Miss Hrbkova's estimate of 67,674, and a generous allowance

While every county of Nebraska has Bohemian inhabitants, the largest numbers are in Douglas, Colfax, Saline, Saunders, and Butler. Cities and towns which have a generous percentage of Bohemians are Omaha, South Omaha, Wilber, Crete, Clarkson, Milligan, Schuyler, and Prague. In the main, however, Bohemians in Nebraska are settled on farms rather than in towns, in small communities rather than in cities, and in the eastern, rather than in the western part of the state.

A large majority of the Bohemians of this state are in agricultural pursuits; and as farmers are the real backbone of the great West, it may be said that the Bohemian farmers are the mainstay of the Czechs in Nebraska, despite the fact that business and the professions each year gain more accessions from them.

FIRST BOHEMIANS IN NEBRASKA

The first Bohemian who came to Nebraska, so far as can be learned, was Libor Alois Slesinger, who was born October 28, 1806, in Usti above the Orlice River, Bohemia. It is noteworthy that this first Bohemian immigrant to this state came to America for political liberty, which the absolutism prevailing in Austria after the uprising of 1848 had stifled in his own country. Slesinger left Bohemia in November, 1856, and in January, 1857, arrived in Cedar Rapids, Iowa, which was a sort of stopping place for most of the Bohemian immigrants *en route* for the great, attractive, beaming West beyond the Missouri. The trip from

from Germans and Hungarians would scarcely make up the deficit. On the same basis—the census of 1910—the estimate of 100,000 Bohemians at the present time (1917) is still more excessive. On the other hand, censuses are far from infallible, and Miss Hrbkova's estimates were based upon laborious investigations in various ways other than actual enumeration, the results of which convinced her that her numbers were not too high.

The data of the census cited are from *The Thirteenth Census of the United States*, 1910, I, table 5, p. 965; table 8, pp. 968-70; table 22, p. 995.—Ed.

Cedar Rapids to Omaha, Slesinger made by wagon. A little later he settled near the Winnebago reservation. His experiences were as picturesque and adventurous as those of other early comers, if not more so. Joseph Horsky, who arrived in 1857 and also came by the Cedar Rapids route, was the second, and the now famous Edward Rosewater the third, Czech to settle in the Cornhusker state.

The homestead act² attracted to the West many Bohemians who had already become citizens or were about to swear allegiance to the "starry flag". Saline county was the first to draw settlers of the Bohemian nationality. The three Jelineks, Nedelas F. Krten, Vac. Sestak, the Kovariks, Robert Sery and John Herman were the first comers, all of them emigrating from the neighborhood of Manitowoc and Kewaunee, Wisconsin. John Herman had been a man of high position in Bohemia; and was an envoy to the emperor of Austria during the troublous period of the revolution of 1848. His zeal for the cause of liberty and constitutional rights was incompatible with absolutist rule, and he was forced to fly to America in 1853. He brought to this country an immense fortune, but lost it through speculations in Wisconsin.

The counties of Butler, Colfax, and Knox were settled very soon after the coming of the Czechs to Saline county. In 1867, the Sonka, Mares, Dostal, Masek and Gruntorad families settled in and around Abie, Bruno, Linwood, and Brainard; whereas the Foldas, Novotnys, and Kratochvils came to Colfax in 1867. Knox county's settlement by Bohemians was arranged in Chicago and Cleveland in 1868. Eight hundred families joined a prearranged colony scheme and moved from those two cities *en masse* to the shores of the Niobrara and the Missouri.

Communities in Nebraska have been given Bohemian names as follows: Prague and Praha, in Saunders county, after the capital city of Bohemia; Shestak, in Saline

² Passed May 20, 1862; became effective January 1, 1863.—Ed.

county; Jelen, in Knox county; and Tabor, in Colfax county.

The first wave of Bohemian immigration to Nebraska consisted of men seeking political and religious freedom. Subsequent waves comprised men escaping enforced military service in the Austrian army or seeking economic betterment. Though large numbers of Bohemians came to America to avoid serving in the army at home, yet these same Bohemians, who had but just fled from enforced militarism, of their own will enlisted here to save the Union. This was true in Cleveland, Chicago, Cedar Rapids and other large Bohemian centers. The Czechs carried off many scars from the Civil War; and you will find their names in the G. A. R. rolls of honor in loyal percentages. So in the Spanish American war, almost whole companies of Bohemian volunteers left Nebraska for the Phillipines and for Cuba. One can well say with Walt Whitman,
Lands of the wild ravine, the dusky Sioux, the lonesome stretch, the
silence,
Haply to-day a mournful wail, haply a trumpet-note for heroes.³

RELIGIOUS LIFE OF CZECHS IN NEBRASKA

From the domain of Roman Catholic Austria to unpledged Nebraska is a step of many thousands of miles. The difference in the religious attitude of many Czechs who have taken that long step is as great and is likewise analogous. Bohemia's greatest trials and sufferings were a result of religious struggles, both internal and with neighboring states. From the introduction of Christianity into Bohemia in 863 by Cyril and Methodius, the nation's brand of religion has been different from that of her neighbors. Bohemia accepted Christianity from two Greek priests of Constantinople, who at once introduced the Slavic Bible and preaching in the mother tongue. Bohemia's neighbors received their Christian missionaries from Rome, which required the Latin service.

³ *Far Dakota's Cañons.*—Ed.

The burning of John Huss, who preceded the German Luther by a decade more than a hundred years, lighted the way for the reformation, which would not have been possible without the work and martyrdom of the Bohemian reformer. The smoldering dissensions which burst again into flame in 1620, when the Bohemian and Moravian Brethren were exiled and the country was depopulated and plundered, have ever and anon crackled and thrust out gleaming tongues. But the days of crucifixions and martyrdoms are memories of the middle ages. A clearer, whiter light now shines for those who think on things religious. Perhaps no other people think or write so much on the various phases of religious controversies as Bohemians. And yet the charge of infidelism is too often wrongfully made against them. A people who are thinking, debating, arguing on religious questions and meanwhile trying to live according to the golden rule are much nearer certain professed ideals of conduct than some of the pharisaical "professors" themselves.

The Bohemians of Nebraska may be roughly classified into three general groups—Roman Catholics, Protestants, and Liberal Thinkers. There are Bohemian churches and priests in forty-four towns and villages. The church at Brainard is a very fine structure, costing over \$40,000, exclusive of interior decorations, and is the pride of the community. Parochial schools are maintained in connection with some of the churches. For instance, there is a fine building in Dodge where 140 children attend the instruction of Sisters of Our Lady. There are some twenty Bohemian Protestant churches in the state, mainly Methodist and Presbyterian. The Liberal Thinkers are but recently organized, so there are only five societies in Nebraska, four of them located in Omaha, and only one of them exclusively devoted to the object of the organization. The others are lodges of different orders which have signified approval of the purposes of the Svobodna Obec or Liberal Thinkers League.

ORGANIZED LIFE OF CZECHS OF NEBRASKA

The Bohemian people in the United States are unusually strong on organization. Judging alone by Nebraska's Bohemian lodge membership one might easily believe they were inveterate "joiners". It is well known that as members of labor unions they are "stickers". They believe thoroughly in the adhesive value of organization to gain a point. However, it is as organizers of social and fraternal protective societies that the Bohemians excel. Practically every man of Bohemian birth or parentage belongs to one or more associations which have for their object insurance, protection in sickness and death, as well as the development of social life. There are also a number of organizations offering no insurance but, instead, opportunities for education along gymnastic, musical, literary or related lines.

The lodges of the fraternal class afford cheap insurance, the assessments in nearly every instance being much lower than in other orders. Of the fraternal orders among the Bohemian people the best known and most widely supported are, the C. S. P. S. (Cesko Slovansky Podporujici Spolek) or Bohemian Slavonian Protective Association, the oldest Bohemian organization in the United States, having been established in 1854 at St. Louis, Missouri, and which has 25,404 members, 513 of them in eleven lodges in Nebraska; the Z. C. B. J. (Zapadni Cesko Bratraska Jednota) or Western Bohemian Fraternal Order, with 18,000 members, of whom 1,189, in sixty-seven lodges, are in Nebraska; the J. C. D. (Jednota Ceskych Dam) or Federation of Bohemian Women, having over 20,000 members with fifteen lodges in Nebraska; the S. P. J. (Sesterska Podporujici Jednota) or Sisterly Protective Association, with five lodges in Nebraska. Several thousand Bohemians of the state belong to the Catholic fraternal orders. There are many minor organizations each with several lodges in Nebraska.

Among the social institutions which do not have any insurance feature but devote themselves directly to the betterment of social and educational conditions are the Sokol societies and the Komensky clubs. The first Komensky educational club, whose purpose is the cultural development of Bohemian communities, was organized at the State University by Bohemian students, in 1906. Since then twenty-six similar clubs have been established in six states, thirteen of them in Nebraska. They have established libraries and reading rooms, organized evening schools, and provided good, clean entertainment for the community.

The Sokol societies are chapters of a central association with headquarters in New York. They provide physical training, wholesome sports, and the use of libraries for members. The high national ideals which characterized the organization of the original Sokol or Falcon societies in the mother country actuated all the early enthusiasts who plunged into the rough pioneer conditions after life in Bohemia where they had all the accessories of the highest civilization. Among the early organizers of Sokol societies in typical Bohemian communities was J. K. Mallat, now of Lincoln, who in 1875 helped to organize the first Sokol society in Crete, giving public gymnastic performances in Kovarik's hall, midway between Crete and Wilber. In 1882 the Sokols were organized in Wilber, where Mr. Mallat, having had thorough gymnastic training in Bohemia, was chosen first instructor or "coach". The Sokol society was an immense factor in the early social life of Wilber. There also a very popular and typical Bohemian amusement, amateur theatricals, reached a high state of development. There was no tragedy too difficult for the Wilber Thespians to attempt in the palmy days when J. K. Schuessler, the grand old man of the Bohemian American stage, directed the performers. Mr. Schuessler, who was the father of Mrs. Fred Herman, of Lincoln, was a pro-

fessional actor in Bohemia and a man of deep patriotic feeling who gave of his ability and strength to the artistic upbuilding of the community which he adopted after he had renounced allegiance to Austria. Under his direction the first successful singing societies were organized, and great indeed was the pride and pleasure of each community in the rendition of those fine Czech folk songs, whose lingering melodies haunt and charm and most appealingly hold united all Bohemian hearts.

The earliest performance of a Bohemian play and concert in Saline county was in 1869, in the first log school-house of the district about midway between Crete and Wilber. The building belonged to John Svoboda and was used as a meeting place for the Bohemian Reading Society, which was organized in June, 1869, its first president being Joseph Jindra.

It is especially significant that this oldest organization of Bohemians in Saline county, and which was among the oldest in the state, was effected for the purpose of meeting to read and discuss books and magazines. Even in those difficult times, when life was mainly a matter of preserving existence in the hard, rough conditions of the day, these recent immigrants from a foreign land to the prairies of Nebraska held to the social and educational ideals of the mother land, bringing into the sordid commonplace of existence the rosy poetry of song, music, the dance, the theatre, and communion with books.

Music, either vocal or instrumental, always had to be present in any gathering of Bohemians, whether it were a meeting of neighbors or a formal session of a lodge. The Czechs are not without warrant called "the nation of musicians", as the Smetanas, Dvoraks, Kubeliks, Kocians, Ondriceks and Destinns fully attest. If a wager were to be made that every Bohemian community in Nebraska today had its own band or orchestra, it is safe to say that the better would win.

The first musical organization west of Omaha was composed of Bohemians. It was the famous Crete orchestra, which used to drive to Lincoln in John Svoboda's wagon, back in Governor Butler's day, to play for dances at the capitol. This pioneer Bohemian orchestra consisted of Frank Nedela, Sr., who still lives in Crete, John Nedela, John Svoboda, Thomas Aron, Joseph Chyba.

BOHEMIANS IN POLITICS

From the earliest times Bohemians have evinced an earnest interest in local, state and national politics. As a rule, they were Democrats; but very early in Nebraska's political development an important group of Bohemian Republicans arose. This change was more rapid after the establishment by Edward Rosewater of a Bohemian weekly Republican newspaper. But in latter days partisanship has become weak among Bohemians, their votes going for men rather than for party measures.

There have been thirty-three Bohemian-American members of the legislature of Nebraska.⁴ J. J. Langer of Saline was a presidential elector and later U. S. consul to Solingen. John Bouchal, of Saline county, is now U. S. vice-consul in Prague, Bohemia. Edward Rosewater, who was the first Bohemian member of a Nebraska legislature—the fourth, also held other offices of honor, representing the United States at the Universal Postal Congress in Washington in 1897, promoting the Trans-Mississippi Exposition at Omaha, in 1898, and being a member of the International Arbitration Conference in 1904. Thomas J. Konop, one of the charter members of the Komensky Club of Bohemian students at the State University, is serving his second term in Congress as representative from Wisconsin, whither he removed from this state.

BOHEMIA IN THE WAR

While the Bohemians are internationally known as the "dove-like race", being conscientious objectors to war in the abstract, they have never been found wanting in the

⁴ The following table contains the names of the members and desig-



BOHEMIAN MEMBERS OF NEBRASKA LEGISLATURES

Left to right, Frank Dolezal, John A. Hospodsky, J. P. Kraus, Frank W. Bartos, Joseph Dostal, John Chab, Otto Kotoune

military ranks when the cause has been just. Great numbers left Bohemia to escape the harsh military tyranny of the Hapsburg rulers of Austria, who were ever exploiting their subjects and forcing them to fight to further their royal purposes. It was not to the taste of the Slavs of Austria to be made the instrument of acquiring new lands for the hated Hapsburgs, and so they fled to free America. But when those same Bohemian immigrants were confronted, in the land of their adoption, with the problem
nates the legislature and the house in which they served, the county in which each resided and his party affiliations:

Names of Members	Year	Branch of Legislature	County	Party
Edward Rosewater	1871	House	Douglas.....	Republican
Frank Folda.....	1875	House	Colfax	Democrat
H. A. Fiser	1879	House	Saunders.....	Greenback
S. J. Herman	1881	House	Saline	Independent
F. J. Sadilek	1883	House	Saline	Antimonopoly
Joseph Jindra	1885	House	Saline	Republican
Cenek Duras	1887	Senate	Saline	Republican
Thomas Simanek	1887	House	Saunders.....	Democrat
William Bohacek	1889	House	Saline	Republican
S. J. Herman	1891	House	Saline	Independent
Thomas Capek	1891	House	Douglas.....	Democrat
James Havlik (born in Illinois)	1895	House	Saunders.....	People's Independent
Joseph G. Dobry (born in Nebraska)	1899	House	Colfax	Fusionist
Vaclav Bures	1901	House	Douglas.....	Republican
J. J. Vlasak	1903	House	Saunders.....	Fusionist
Joseph G. Dobry	1903	House	Colfax	Fusionist
Frank J. Fitle	1905	House	Douglas.....	Republican
John J. Pospisil	1905	House	Saunders.....	Republican
Frank Rejcha	1907	House	Lancaster	Republican
Frank Vopalensky	1907	House	Saunders.....	People's Independent
J. P. Kraus	1909	House	Douglas.....	Democrat
Frank Dolezal	1909	House	Saunders.....	People's Independent
Joseph Dostal	1909	House	Butler	Democrat
John Chab	1909	House	Saline	Democrat
John A. Hospodsky	1909	House	Saline	Democrat and People's Independent
Otto Kotouc	1909	House	Richardson	Democrat
Frank W. Bartos	1909	Senate	Saline	Democrat
Otto Kotouc	1911	House	Richardson	Democrat
J. B. Sindelar	1911	House	Colfax	Democrat
John D. Hasik	1911	House	Butler	Republican
Joseph Dostal	1911	House	Butler	Democrat
John A. Hospodsky	1911	House	Saline	Democrat and People's Independent
Anton Sagl	1911	House	Saline	Democrat and People's Independent
Frank Dolezal	1911	House	Saunders.....	People's Independent
Frank J. Riba	1911	House	Douglas.....	Democrat
Emil E. Placek	1911	Senate	Saunders.....	Democrat
Frank W. Bartos	1911	Senate	Saline	Democrat
J. B. Sindelar	1913	House	Colfax	Democrat
John D. Hasik	1913	House	Butler	Republican
Emil E. Placek	1913	Senate	Saunders.....	Democrat
E. J. Spirk	1913	Senate	Saline	Republican
E. J. Spirk	1915	Senate	Saline	Republican
J. B. Sindelar	1915	House	Colfax	Democrat
C. F. Hynek	1915	House	Saline	Democrat
J. J. Jelen	1917	House	Douglas.....	Democrat
J. B. Sindelar	1917	House	Colfax	Democrat
E. J. Spirk	1917	Senate	Saline	Republican.—Ed.

which Lincoln faced—internal disunion, secession—they joined of their own will the ranks of the army that fought for the union of the states. The Civil War was not to the Czechs so much a matter of freeing the slaves, of which they knew but little, but it was a question of preserving the integrity, the oneness, of the United States. They had known too well what international strife meant, for in Bohemia the arrogant Teuton, strutting swaggeringly in the sun of the Hapsburg favor, had all too long clawed at the throat of the Slav, foaming impotently the blood of resentment made abortive by Vienna's tyranny.

In the crisis of 1917, when the president's proclamation was published, at once, in every community containing Bohemian citizens, large numbers began to enlist. In counties like Saunders, Saline, Dodge, Colfax, and Douglas almost entire companies were formed of Bohemian residents. It is felicitous to note that a large number of districts with a ninety-five per cent Bohemian population did not come under the operations of the draft law. The heavy voluntary enlistments had made the application of the draft unnecessary. In no other foreign speaking district of the state was the same condition noted. A complete list of volunteers is, of course, impossible at this writing, but patriotic societies, working alike for the good name of Nebraska and of the Czechs settled therein, are at work on the compilation of such a record.

BOHEMIAN JOURNALISM

The Bohemians, like all pioneers of western states, had the problem of getting a living to solve before the question of higher education could be wrestled with. But that the Czech could not long remain content without some intellectual pabulum in addition to the simple necessities is shown by the fact that when barely a handful of them had settled in the state they clamored for a newspaper printed in their own language. To be sure, long before this, Bohemian newspapers from eastern states had been circu-

lated here, the first paper in the Bohemian language, *Slovan Amerikansky* (American Slav), having been issued January 1, 1860, at Racine, Wisconsin.

Edward Rosewater, popularly known as Rozvaril, who was born in Bukovany, Bohemia, in 1841, and had come to the United States in 1854, a green Bohemian youth, had after a number of experiences settled in Omaha where he started the *Omaha Bee*, in 1871, and his Bohemian weekly, the *Pokrok Zapadu* (Progress of the West). The first number of this first Bohemian newspaper in Nebraska was issued August 1, 1871. The motto of this paper was "Pilne slouzit zajmu narodnimu, hledet chci vzdy k vzdeleni obecnemu" (While ever serving national interest let me give heed always to the education of all). The first editorial of the first issue insists that Austria must become a Slavonic state, that it stands or falls in correspondence with the success or failure of the Bohemian people.

Special editorial notice is given in the issue of January 15, 1872, of that part of President Grant's message to Congress in which he approves the union of the telegraph with the postal department, arguing that public ownership of the telegraph system along the same lines as the postal business will improve and extend the service as well as diminish its cost to individuals. After all, we progress very slowly. An advertisement in the first issue offers lands in the Platte valley at from \$2.50 to \$10 an acre.

V. J. Vodicka, the first business manager of the *Pokrok Zapadu*, who died in Omaha early in 1917, worked untiringly and gratuitously to turn Bohemian immigration towards the virgin prairies of Nebraska and succeeded in establishing six colonies, all agricultural communities. In later days John Rosicky by his pamphlet, *Jak Je v Americe* (How Things are in America), materially aided Bohemians in Europe in selecting the states to which they would emigrate. In November, 1872, the *Pokrok Zapadu* absorbed the *Amerikan*. In 1877 it passed into the possession of

John Rosicky, who sold it twelve years later to a print company under the direction of Mr. Vaclav Bures in whose management it has since remained. Many excellent journalists have sat in the editorial chair of the *Pokrok*, among them, Vaclav Snajdr, Fr. B. Zdrubek, V. A. Jung, Thos. Capek, Jan A. Oliverius, Lou W. Dongres, F. J. Kutak, O. Charvat.

John Rosicky, who left Bohemia in 1860 to escape military service, has been an important figure in Bohemian journalism and the social life of the Bohemian people, not only in Nebraska, but throughout the middle West. After selling the *Pokrok Zapadu* he established other papers, among them the *Obzor*, the *Americke Kvety*, and the *Osveta*, which have been combined in the present weekly, *Osveta Americka* (Enlightenment of America) which for a time published local editions in various communities of the state. In 1916 it became a literary weekly with the name *Kvety Americke*. The growth of the paper is well exemplified by a comparison of an early issue with the current number. Some twenty Bohemian papers have been started in this state, continuing with varying success for various periods. A daily was established in Omaha in 1916.

To-day there are eight Bohemian newspapers in Nebraska, three of which are published in Omaha—the *Pokrok Zapadu*, daily and weekly, politics, Republican; *Kvety Americke* (American Blossoms), weekly, Democratic; *Nova Doba* (New Era), semi-weekly; *Rozhledy* (Reviews), weekly, and one, the *Domaci Noviny* (Home News) in Clarkson. In addition local editions of each of these papers are printed for Wilber, Crete, Schuyler, Howells, Dodge, and other places. Four monthly magazines are issued in the state, two of them—the *Hospodar* (Farmer) and the *Cesko-Americky Venkov* (Bohemian American Country Life)—being very good agricultural journals. The first of these farm journals, the *Hospodar*,

has been published since March, 1891. Its growth and improvement are shown by a comparison of the second issue with recent ones. Number 2, issued April 15, 1891, advertised as "The only Bohemian Agricultural and Horticultural Journal in the U. S.", edited by Lou W. Dongres, and published by the Pokrok Zapadu Publishing Company, has an interesting article about alfalfa, its history and value, and urging Bohemian farmers to cultivate it.

The *Komensky* is an illustrated and educational magazine published by the united Bohemian students clubs of the same name. It is the first and only Bohemian periodical ever published at Lincoln. These clubs are now raising a fund for the erection of a statue of Komensky on the campus of the State University.

The *Zivot* (Life) is a Methodist monthly published at Crete, by Rev. Charles Sladek.

BOHEMIAN LITERATURE OF NEBRASKA

Vaclav A. Jung, a former Nebraskan, has written a number of fine poems and translated Byron's "Don Juan" and Pushkin's *Eugene Onegin* into Bohemian. Mr. Jung's novel *On the Threshold of a New World, or the Family of Peter Bel* (Na Prahu Noveho Sveta aneb Rodina Petra Bea) depicts Nebraska life and character. In the capacity of instructor in English in Pilsen Academy, Bohemia, he has recently completed an English-Bohemian dictionary. Thos. Capek, one time member of the state legislature, has written a number of books showing extensive and valuable research, among them *Early Bohemian Immigration* (Pamatky Ceskych Emigrantu), *Fifty Years of Bohemian Journalism in America* (Padesat Let Ceskeho Tisku v Americe). In the English language he has written *The Slovaks of Hungary, Austria-Hungary and the Slavonians*, and *Bohemian (Czech) Bibliography*.

Rev. John Vranek, of Omaha, has published a book of Bohemian poems, *On American Soil* (Na Pude Americke).

A. Z. Donato, of Wahoo, published the story of his trip around the world under the title of *Kolem Sveta o Jedne Noze*.

Rev. A. Klein, of Brainard, at present general vicar of the diocese of Lincoln, has contributed valuable articles to the *Otto Encyclopedia*.

Rev. Father J. S. Broz, formerly of Dodge, now of Schuyler, in addition to frequent poetic and prose contributions to the Catholic press of this country, is at work upon a history of Nebraska in the Bohemian language. He has published *Z Prerie* (From the Prairies), a book of Nebraska lyrics.

Prof. Jeffrey D. Hrbek, the first instructor in Bohemian at the State University, wrote a large number of English poems which were collected and published after his death under the title of *Linden Blossoms*.

John Habenicht, now of Chicago, has collected and published in Bohemian some historical data of Nebraska, largely concerned with the history of Catholic communities.

Among English books and articles by Americans dealing with the subject of the Bohemians of Nebraska, especially notable are *Our Slavic Fellow Citizens*, by Emily Greene Balch, and *O Pioneers!*, by Willa Sibert Cather, also "The Bohemian Girl," in McClure's Magazine, August, 1912, by the same author.

BOHEMIAN LIBRARIES

Almost every Bohemian lodge or fraternal society in the state has some sort of a library, ranging from a few works of fiction to several hundred volumes embracing valuable works of reference.

The Z. C. B. J. or Western Bohemian Fraternal Order, on the suggestion of John Rosicky, in 1907 purchased some 1,000 volumes of selected Bohemian literature which were presented to the state library commission to send out to

Bohemian communities. Miss Charlotte Templeton, manager of the state traveling libraries, reports that these books are among the busiest in the state collection, being constantly loaned out to various Bohemian centers in the town and country districts.

The Komensky Club of South Omaha presented the public library of that city with a goodly number of valuable Bohemian books which are in constant circulation. The State University's Slavonic department also has a growing collection of well selected reference books. Other collections are owned by societies or private individuals in the state.

BOHEMIANS IN EDUCATION

Ever since the great Bohemian educator, John Amos Komensky (Comenius), advocated universal education as well as many other reforms and progressive pedagogical ideas in his wonderful work *The Great Didactic*, written almost three hundred years ago, the Bohemian people have been steady advocates of education. The little country has had compulsory education laws for over half a century and its people have always held a high place among cultured races. It is, therefore, justly proud of the fact that in 1348 it established the first university in central Europe, the University of Prague, antedating the first German university by over fifty years.

An examination of the records of the United States commissioner of immigration will show that immigrants from Bohemia have a far higher rate of literacy than those from Germany, France, Ireland and other nations, who are often credited with a much better standing than they deserve. For instance, in the fiscal year 1912, of 65,343 German immigrants who arrived in the United States, 2,736 could not read or write; of 18,382 French, 1,083 were illiterate; of 33,922 Irish, 390 could not read or write; whereas, of 8,439 Bohemians, only 75, or less than 1 per cent were illiterates.

As a rule, the Bohemians of this state have upheld this record, giving their children the advantages of public school education, though, to be precise, it is only within late years that they have been able to send them on through the high school and then to the college or university.

It is interesting to note that one hundred and twenty of the alumni of the University of Nebraska are either of Bohemian birth or of Bohemian parentage. Of this number about 40 per cent have won honors of some sort. There are now seventy-four Bohemian-American students enrolled in the University.

In 1907 a department of Bohemian was established in the State University, Jeffrey D. Hrbek being called from the state university of Iowa to the first chair of Bohemian founded in any state university, advanced Bohemian instruction theretofore having been given only in sectarian colleges. Since the establishment of the department in Lincoln, the state university of Iowa, Coe College in Cedar Rapids, Iowa, Georgetown University in Texas, German College in Dubuque, Iowa, and the state universities of Ohio and Texas have put in Bohemian departments.

There are 290 teachers of Bohemian birth or parentage in public schools in some forty counties of northern and eastern Nebraska. Two are county superintendents—F. J. Vogltanc of Colfax, and Louis J. Bouchal of Saline.

AN INCIDENT IN THE IMPEACHMENT OF GOVERNOR BUTLER

The following letter was written by Ebenezer E. Cunningham at South San Francisco, California, January 6, 1905. Mr. Cunningham was a conspicuous politician at the time of which he writes. He was president of the senate during most of the impeachment trial of Governor Butler.—Ed.

I enclose a scrap of paper which has remained in my keeping for 34 years. It is in the well known handwriting of the late Judge E. S. Dundy, and was the first move made in proceedings which ended in the impeachment and removal from office of the state of Nebraska's first governor. As its history has never been told and may prove of interest, I will relate it.

Throughout the summer of 1870, and prior to the meeting of the Republican state convention, charges of fraud and speculation were made daily, by the *Omaha Herald*, and other Democratic papers, against Governor David Butler and his associates in the board of [capital] commissioners, in connection with loaning school funds, and the sale of Lincoln lots, and contracts for erecting public buildings at the new state capital. These charges were believed by many citizens and by not a few Republicans, and of the number who feared the charges might prove true were Judge Dundy and the writer.

Judge Dundy and myself, with others, were chosen as delegates to represent Richardson county at the Republican state convention of 1870, which met in the new capitol at Lincoln. Governor Butler was a candidate before the convention for renomination, and his principal competitor was Colonel Robert W. Furnas, of Nemaha county. At that time the people of the adjoining counties of Richardson and Nemaha were straining every nerve to secure a

railroad. The Richardson county people were bitterly opposed to Furnas, believing his success would prove fatal to a railroad through Richardson county.

When the state convention assembled, Dundy and I were the only delegates who attended, and we held the proxies of the other delegates from Richardson. We did not feel at liberty to support Furnas on account of local interests and feelings, and we feared to see Butler renominated; therefore we cast the vote of Richardson county for Samuel Maxwell of Cass county. After several ballots without a choice, Maxwell's strength began to fall away, some votes going to Furnas and some to Butler. Finally Dundy and I were reduced to the extremity of choosing between the two leading candidates, and we cast Richardson's vote for Butler, nominating him. When the convention adjourned, the Judge and I returned to the Tichenor House filled with gloom over the victory we had helped to win.

At the fall election of 1870 I was reelected to the state senate, and when the legislature met was chosen president of the senate. Butler of course was reelected governor.

During the winter of 1870-71, I roomed with Judge Dundy, or rather we roomed together at the old Tichenor House. After the senatorial election was over, the war on Butler and his associates was renewed with tenfold fury. One evening, in our rooms at the Tichenor, there being present, besides Dundy and myself, Tom B. Stevenson, a lawyer and former state senator, of Nebraska City, and S. B. Fulton, a young lawyer of Falls City, the Butler charges were discussed at length, and the four Republicans present were agreed that an investigation of the charges was required, in the interest of the Republican party as well as of the state. I was the only member of the legislature present, and I requested Dundy to draw a joint resolution providing for legislative investigation. The enclosed paper, with its erasures and interlineations, was the

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result. After it had been completed, it was copied (by either Stevenson or Fulton, my recollection is that it was by the latter), the Judge very naturally desiring not to be known in the matter. A copy was placed in the hands of a member of each house, introduced and finally adopted by both houses, with amendments I presume, and the result of the investigation was a resolution of impeachment.

After the first copy was made, I asked Judge Dundy to allow me to take the original paper, which request was granted, and it has remained in my possession since. Now that the Judge is gone I see no harm to any one in making the facts known and giving the paper to you, that it may find a place among other scraps of early history in case you deem it of sufficient value.

I understand Tom Stevenson is long since dead, that Fulton is out of the state and may be under the sod, and I am probably the only one living of the four who were in the room when and where this incident had its birth. It has seemed to me that there was a sort of retributive justice in the fact that the two who gave the casting votes which made Butler the Republican nominee should have had something to do with the action which repaired in a measure their mistake and that of the Republican party.

COPY OF DUNDY'S RESOLUTION FOR THE APPOINTMENT OF AN INVESTIGATION COMMITTEE

Concurrent Resolution providing for the appointment of a committee to investigate the official acts and doings of the Commission appointed by the Legislature of this State (to locate the seat of Government and provide for the erection of Public Buildings and to sell the unsold lots and blocks on the town site of Lincoln and to locate and erect a State University and State Lunatic Asylum).

WHEREAS, It is currently reported throughout the State and publicly charged in certain prints of this State that the Commissioners appointed (to locate the Seat) have violated the trusts reposed in them by exceeding the authority given them under the laws by which they were created, and by engaging in certain speculations and frauds.

AND WHEREAS, We deem it but just that if these charges are false the aforesaid Commission should have the opportunity of vindicating themselves before the Legislature and people of this State, therefore be it resolved by the Legislature of the State of Nebraska that a committee of two on the part of the Senate to be chosen by the Senate and three on the part of the House to be chosen by the House be and are hereby appointed to investigate the official acts and doings of the aforesaid Commission, and that said committee have power to send for persons and papers and that they be directed to make report of their investigation to the Legislature at its present session.¹

¹Mr. Cunningham's supposition that the foregoing preamble and resolution was adopted by the legislature is erroneous. The resolution providing for the investigation adverted to was introduced in the House by Mr. Galey, of Lancaster county, on February 1, 1871, and it was promptly passed by both houses the same day under suspension of the rules. There is no resemblance in form between this resolution and that written by Judge Dundy. *House Journal*, eighth session, pp. 221, 222; *Senate Journal*, *ibid.*, p. 123; *Laws of Nebraska*, eighth session, p. 240. On January 30 Lawson Sheldon, of Cass county, offered a resolution in the Senate, for a like purpose, whose first line closely resembles that of the Dundy resolution. It was adopted unanimously, a committee of three senators was appointed by its authority, and it had begun an investigation before the joint committee was appointed. *Senate Journal*, *ibid.*, p. 107.—Ed.

THE MESCAL SOCIETY AMONG THE OMAHA INDIANS

BY MELVIN R. GILMORE

In these times of "spiritual unrest", so denominated by a recent magazine writer, when "Christian Science", "New Thought", "Theosophy", "Divine Healing", "Dowieism", the "Emmanuel Movement", and such things claim their adherents among our own people, it may be of interest to note that from time to time movements, perhaps not similar but analogous, make their way among the people of the race which occupied this continent before us.

Among such movements may be mentioned the "Ghost Dance" of near two decades ago, and the "Mescal Society", which has had more permanence, and which now has perhaps more adherents than ever before, among most of the tribes of Oklahoma and others of the southwest, from whence the cult has spread to some of the northern tribes. The mescal was introduced into the Omaha tribe in the winter of 1906-7 by an Omaha returning from a visit to the Oto in Oklahoma. He had been much addicted to alcoholics, and was told by an Oto that this plant and the religious cult practised therewith would be a cure. On his return he sought the advice and help of the leader of the Mescal Society of the Winnebago, next neighbors tribe of the Omaha. He and a few other Omaha, who also suffered from alcoholism, formed a society which has since increased in numbers and influence against much opposition, till it includes about half of the tribe.

Those who joined the society did so, as they informed the writer, with the purpose "to throw away all their bad habits—drinking, gambling, and wife desertion"; and indeed a wonderful change has taken place in their lives;

they are now sober, industrious, and intent on living in peace and quiet.

The mescal plant and its cult appeal strongly to the Indian sense of the mysterious and occult, and his appreciation of ceremonialism and symbolism. The Indian mind, being in that psychic stage which peoples all natural objects with spirits, quite naturally attributes to the mescal plant wonderful properties and powers. As the Semitic and Aryan minds have found it possible to conceive that deity may be incarnated in an animal body—a human body—to the Indian mind it seems just as reasonable to conceive that deity may dwell in a plant body. So the Indian pays it divine honors and makes prayers to it or in connection with it, and eats it or drinks a decoction of it in order to appropriate the divine spirit, to induce the good and to exorcise the evil, making its use analogous to the Christian use of bread and wine in the eucharist.

James Mooney, in "A Calendar History of the Kiowa Indians", says: "The greatest of the Kiowa gods is the sun . . . Next to the sun the buffalo and the 'seni' or peyote plant claim reverence, and these may be reduced to the same analysis, as the buffalo bull in his strength and majesty is regarded as the animal symbol of the sun, while the peyote, with its circular disk and its bright center, surrounded by white spots or rays, is its vegetal representative." The same author, in an article on "The Mescal Plant and Ceremony", says: "The traders call it mescal . . . The local name upon the Rio Grande is peyote or pellote, from the old Aztec name, peyotle."

The plant is a certain small, turnip-shaped cactus, *Lophophora williamsii* Coult. The part used is the top, which, after being cut off with a knife, forms a disk about one to one and one-half inches in diameter. Surrounding the center are tufts of whitish hairs. The "buttons" are very bitter and disagreeable to the taste. The physiological effect from them is a form of intoxication which



LODGE OF OMAHA INDIAN MESCAL SOCIETY, 1906

consists in an over-stimulation of the nerve center of sight, resulting in hallucinations of most wonderful visions, with remarkably beautiful kaleidoscopic changes, the character of the visions depending upon the temperament and mental content of the subject. Thus a white man, with his inherited and acquired habit of thought and store of mental concepts, would see a different set of visions from those seen by an Indian, whose mental habit and concepts are different. The visions are also partly induced by the hypnotic power of suggestion and expectancy.

The mescal cult is a curious example of the blending of ideas, beliefs and customs. No doubt the fundamental rites antedate the coming of white men, perhaps many centuries; but since then Christian ideas have been added together with original religious ideas of the various tribes to which the cult has been brought. Thus the Omaha, of Nebraska, have interjected the use of the wild sage, *Artemisia gnaphalodes*, in connection with mescal ceremonies, that plant having been an immemorial symbol of sacredness among the Omaha.

The writer has been present, by invitation, at several mescal meetings in the Omaha tribe. The entrance of the tent of meeting toward the east, the fireplace, in the center, is usually an excavation, eight to twelve inches deep, and in the shape of a heart to represent the heart of Jesus. Quantities of artemisia plants are often gathered and strewn in a circle surrounding the fire, and upon these the people sit facing the fire. At the west side, which represents the base of the heart, a "mescal button" is placed upon a cloth worked with symbolic figures, as upon an altar. Near this is placed an open bible and there is set up a staff about three feet in height, decorated with beads and symbolic feathers. Here is seated the leader, having in one hand a symbolic fan made of twelve eagle feathers, representing the twelve apostles of Christ, and in the other hand a rattle made from a gourd on which are various

carved symbolic pictures from the life of Christ, while the handle is decorated with beads and feathers. At the leader's left sits the officer next in rank who has a drum, made by stretching a piece of skin over the mouth of a crock which is kept partly filled with water. The drumhead is kept wet so that the effect of the sound from it is a low continuous and insistent thrumming, which does not seem loud, even at close range, but which can be heard at a surprising distance. The fire is lighted and kept burning by attendants appointed to that task. An attendant distributes a supply of "mescal buttons" to the circle of worshippers, beginning with the leader and going round the circle in the direction of the sun; that is, from the west, by the north, to the east, and back by the south. The people eat the buttons gazing downward or into the fire. The leader sings a chant and the man at his left accompanies him with the drum. Then the drum and rattle are passed to the next two on the left who likewise sing a chant; and so round the circle, the attendant meanwhile supplying more of the "mescals" as required. The meetings usually last all night. The hypnotic effect of firelight is well known, and here we have several factors conducing to this effect: the firelight, the community of thought, abstraction from all extraneous affairs, the droning chant, the hissing of the rattle, the insistent thrumming note of the drum, and the mental attitude of expectancy induced by the words of the speakers who discourse on what they shall be privileged to see. Having no notion at all of the chemical reaction of the human body to the drug, they fancy that they really see most wonderful visions of spirits. For example, at one meeting the leader read the account in the Old Testament of the prophet being taken up to heaven in a chariot of fire. Then the singing and drumming began, and the physiological action of the drug having taken effect, one man related what he had seen. He said Jesus had come for him in an automobile and had taken him up to heaven where he had seen God in His glory, in a splendid city, and

with Him many of the great men of all time, more than he could number.

I have been told by a member of the mescal society that while they are under the influence of the "medicine" in the meeting they can "see the thoughts" of those present, so if anyone is not in accord, is "thinking bad thoughts" he would be revealed to the true worshippers.

They habitually repeat the promise of Jesus that if He goes away He will not leave them orphans but will send another comforter, applying this assurance to the "medicine", that is the peyote, saying it is the promised comforter and that it will lead them into all truth.

REMINISCENCES OF WILLIAM AUGUSTUS GWYER¹

I was born in the city of New York, March 10, 1820. My father was an English gentleman, using that word in the English sense. My mother was a descendant of a Huguenot who fled from France to England to escape persecution, and from thence to the colony of Massachusetts in 1635. He was one of the proprietors and settlers of the town of Norwalk, Connecticut, in 1651. His descendants down to the present time have participated in all the wars of the colonies and of the American Revolution; I had three ancestors in that war, and through their heroic services I am now a member of the Society of the Sons of the American Revolution. My father died when I was three years of age, and though he left me, by will, an ample competence, I never received a penny of it. How it so mysteriously disappeared I never knew. I was brought up by my mother, who did the best she could for me through difficulties and hardships until I was fifteen years of age, when a situation was procured for me in a dry goods store. I continued in this business until I was twenty-one. At that time a merchant whose acquaintance I had made proposed to me to go into business and outlined his plan, which was to go to North Carolina in the turpentine region and open a store, he was to ship me all the merchandise needed. I was to sell the same and remit proceeds to him in cash or naval stores. I accepted his proposition with alacrity; it was a big thing for me to have an offer to enter into business on my own account without any capital of my own. I went to North Carolina and began operations. It was a success

¹ For a biography of Mr. Gwyer see *History of Nebraska*, II, 82.—
Ed.

from the beginning. He sent me the goods as wanted and I sold them and remitted salary, and the endless chain worked beautifully. At the expiration of three years we dissolved partnership and divided the profits, which was satisfactory to both parties. I then removed to Wilmington, North Carolina, and began business as a commission merchant in cotton and naval stores. My business grew with great rapidity. I made money rapidly. I became the most extensive consignee of cotton and naval stores in the city. I continued in this business until 1856, when the demon of unrest got possession of me. I had conquered what I had set out to do, acquired a fortune, at the early age of thirty-six; but I was not satisfied. I had read glowing descriptions of the great West, and had conceived an ambition to assist in the building of new states. These ideas took full possession of me, and under their inspiration I closed up my business and went north to Minnesota, Iowa, and Nebraska.

I reached Omaha in the autumn of 1856. I found here a population of about 1,000 inhabitants, nearly all young men, very few women. All had come here to grow up with the country and make their fortunes. They were mostly impecunious, but they were able and brilliant men—students, scholars, lawyers, surveyors. I doubt if their equals could be found in proportion to numbers anywhere in the United States. J. Sterling Morton, secretary of the territory, Doctor George L. Miller, Andrew J. Poppleton, William N. Byers, Joseph W. Paddock, Jesse Lowe, Alfred D. Jones, William D. Brown were here at that time, and others whose names I cannot now remember. The Douglas House, corner of Harney and Eighteenth streets, was the only hotel, and it was filled to overflowing. Here many of the residents, speculators, lot owners, lawyers and adolescent statesmen congregated to talk lots and lands and to fire the hearts of all new arrivals with the certainty of future values, the fortunes to be made by buying lots on

Farnam and Douglas streets. All you had to do was to buy to-day and sell to-morrow. When I look back I am inclined to think I was hypnotized. I began buying. I bought largely. I spent many thousands of dollars for city lots and farm lands. There was no legal title to any of them. The title for city lots came from the speculators who surveyed and laid out the city, and the title to farm lands came from the squatter who claimed all he could see about him; and it was contended that these inchoate titles would ripen into good and valid deeds. But I found, after I had made my purchases, that the best title was a shotgun well loaded, and that even this was not effectual unless you stood guard night and day. This would do very well if a man owned only one lot or tract. But I could not subdivide myself enough to be effective on all the various lots or tracts of land I owned; hence I was a victim. I learned the lesson at much cost.

In process of time² Congress passed an act called the town site act, but this act included only 320 acres, and Omaha included more than 1,000 acres. Here then was an opportunity for cunning, craft, or graft. The corporate authorities were authorized by the act to locate the town site and give valid title, but where should they locate it on this 1,000 or more acres. This was an important question. All within the 320 acres could procure a good and valid title and none outside the line had any title but the shotgun. Thus a good deal of property was lost by those who had confided in the specious arguments that the title would be made good. It was about the same with the farm lands. The homestead act, the most efficient act ever placed on the statute book and which did so much to settle up the state of Nebraska, allowed 160 acres as a homestead; but every squatter north of the Platte river claimed everything in sight and sold to every victim who presented himself, taking care to have a shanty or anything that could be called a

² May 23, 1844. *U. S. Statutes at Large*, V, 657.—Ed.

house on the tract that he called his home. All the remainder that he had found a victim for was without title, and nobody could obtain one without settling upon the land and complying with the terms of the homestead law and other laws applicable to public lands. Thus many thousands of dollars were lost by confiding purchasers.

I spent part of the winter of 1856-57 at Bellevue. There, as at Omaha, were some able men. I recall General Silas A. Strickland, Judge Leavitt L. Bowen, Ex-Governor McComas of Virginia,³ Henry T. Clarke and others. This was the first settled town in Nebraska. It was founded by the Presbyterian board of foreign missions.⁴ Mark you, foreign missions, not home missions. Way back in the

³ The habit of investing newcomers with titles, strongest and most common on the frontier, is doubtless due mainly to a desire thus to enhance the gain to the community through its distinguished citizenship; and, naturally, the rules of the game are not very rigid. It does not appear that Virginia ever had a governor called McComas.—Ed.

⁴ It is incorrect to say that Bellevue was founded at any specific time or by any specific person or organization of persons. In the decade of 1820-30 it became a popular rendezvous or stopping place for white traders with Indians. In, or not long before, 1830 Drips and Fontenelle, who had working relations with the American Fur Company, erected a permanent building there to accommodate their Rocky Mountains trade. Some time between October 1, 1831, and September 30, 1832, Lucien Fontenelle sold his establishment to John Dougherty, Indian agent, for agency purposes. The agent's report of October 30, 1832, appears to be the first agency report dated at Bellevue. Though the agent had visited Bellevue from time to time previous to this date, to attend to the business of his agency, his headquarters was at Cantonment Leavenworth in 1828, 1829 and 1830. Bellevue was formally founded by an act of the first legislative assembly of Nebraska, approved March 15, 1855, which granted a charter to the City of Bellevue. Bellevue became a permanent settlement some time, but not very long, before 1830.

Three of the four quarter sections comprising the land of the Presbyterian Board of Foreign Missions are in section 36, township 14, range 13 east. The other quarter is in section 1, township 13, range 13. The date of the patent from the United States to the board is April 10, 1858; it was filed June 11, 1858. Walter Lowrie and others formed it into a plat of Bellevue which was filed June 18, 1858. A plat of Anderson's addition to Bellevue, comprising twelve blocks, was filed not long after.—Ed.

East the good people, anxious to save the souls of the heathen, procured from our beneficent government a grant of 640 acres of public lands, to assist in the regeneration of the pagan Indians by teaching them agriculture.⁵ They were taught to raise corn, pumpkins, squashes, etc., whilst imbibing the knowledge of the white man's God. There is no record of how many Indians were converted, or how much it cost per soul, but I saw some spindling stalks of corn there which may have had some nubbins on them. The town was growing, the town site is exceedingly beautiful, perhaps the most beautiful in the state, the people were enthusiastic about their town and very jealous of the growing importance of Omaha. When the territory was organized in 1854 and the counties were laid off and bounded, the county of Douglas extended south to the Platte River and west to the Elkhorn River. But the people of Bellevue and the settlers of the south end of Douglas county were dissatisfied with existing conditions. Jealousy was the progenitor of dissension, and the turbulent spirits were determined to clip the wings of Omaha. The best way to accomplish this object was to divide the county and make a way by which ambitious spirits could be sent to the legislative assembly. There was no reason whatever why Douglas county should be

⁵ Section 13 of the treaty of March 16, 1854, by which the Omaha Indians ceded to the United States all their lands in Nebraska except a reservation for their own use, is as follows:

The board of foreign missions of the Presbyterian church have on the lands of the Omahas a manual labor boarding school, for the education of the Omaha, Otoe and other Indian youth, which is now in successful operation, and as it will be some time before the necessary buildings can be erected on the reservation, and [it is] desirable that the school should not be suspended, it is agreed that the said board shall have four adjoining quarter sections of land, so as to include as near as may be all the improvements heretofore made by them; and the President is authorized to issue to the proper authority of said board a patent in fee simple for such four quarter sections. *U. S. Statutes at Large*, X, 1043.

In his *Nebraska in 1857*, page 88, James M. Woolworth, mentioning this incident, remarked that "those savages insisted upon the cession of the land occupied by the Mission to the parties in charge of it."—ED.

divided other than ambition and jealousy.⁶ For these reasons Sarpy county sprang into existence. It was named Sarpy after a French trader, Peter A. Sarpy, who had a trading post at Bellevue years before the territory was organized. I had some peculiar experiences at Bellevue. The Presbyterian Board of Foreign Missions was doing nothing in the line of converting pagan Indians and had conceived the idea of laying off a town site, issuing shares of stock and selling them. When I arrived they were selling at \$1,000 per share, calling for 25 lots each. I bought some and afterwards bought some lots of other parties until my holdings amounted to 150 lots. In the summer of 1857, anxious to build up the town, I established a brick plant. I had clay and wood in abundance and made two kilns of brick, about 200,000. I sold a moderate amount when sales began to slack and I concluded to erect a brick store. I built the store up two stories and had all the material on the ground—rafters, roof boards, shingles and flooring ready for building rapidly, when there came one of those gyrating, twisting, whirling devils, peculiar to Nebraska and Kansas. It smote that store, twisted it around and levelled the structure to the ground, then lifted up all the materials and debris to the clouds, and when it got tired let go and scattered everything over the prairie. The people seemed to think it was a special dispensation of providence in their favor and appropriated the whole. God was good to give them so much building material for nothing. Some time after it was all done I was passing that way and found a man with a crowbar digging up the

⁶ The true history of the creation of Sarpy county shows that it was inspired by the positive wish and probably by a justifiable jealousy of the rights and interests of the residents of the district which comprised the new county. For an account of the struggle over the establishing of Sarpy county see Nebraska State Historical Society, *Collections*, XVI, 98-114. The cause of the strong popular feeling in favor of separation from Douglas county is stated in the majority report of the select committee of the council printed on page 109 of the volume cited.—Ed.

foundation stones and carrying them away. I said nothing. Why should I object? He might as well have them as anybody, for some one would surely take them.

I now have an experience to relate which is seemingly incredible, but it is absolutely true. I had built a well on the lot which was about a hundred feet deep and bricked up from the bottom. It was the only well on the hill, the people procuring their water from the numerous springs at the foot of the bluff. It cost about \$200. All the town had the use of it. I had rigged it up with windlass, rope and buckets. It was apparently a public blessing at my expense. Soon after the house blew down, the rope and buckets disappeared, then the windlass was invisible, and in due time the bricks began to go, and this continued until all of them were appropriated. I thought the thing was ended and there was nothing more for the appropriators. I passed the place a year afterward and found an enterprising man had squatted on my lot and claimed it for his own. Thus was completed the stealing of the well, by stealing the hole in the ground. I paid taxes on my lots for many years, until I became exhausted and quit. The last I heard about them, a new speculator on others' misfortunes was fencing in the town for his personal use as a farm. My total loss on Bellevue was about \$12,000.

I occasionally drove down to the Platte, where a little settlement was forming, and I made the acquaintance of Richard Hogeboom and General Larimer.⁷ I had formerly

⁷ William Larimer, Jr., came to Nebraska in 1854 and was a member of the House of Representatives of the second legislative assembly. As president of the Larimer City Town Company, General Larimer filed a certificate of the claim of the site of the company, comprising the east half of section 27, township 13, range 13 east of the first principal meridian, on July 20, 1857. The present town site of La Platte borders on the northern part of the east boundary of the projected Larimer City. As president of the La Platte City Company, on April 1, 1857, he filed a declaratory statement claiming parts of sections 30 and 31, township 13, range 14 east, comprising 313.20 acres, as the site of La Platte City. This site is in the extreme corner formed by the junction of the Platte with the Missouri River.

He was born on October 24, 1809. His birthplace is within the battle-field of Gettysburg. Removing to Pittsburg, he became a merchant, a banker, and president of a short line of railroad. He was also major-general of the western division of the Pennsylvania militia. In 1858 he removed from Nebraska to Leavenworth, Kansas, and in the fall of the same year he went to the Pike's Peak gold fields and assisted in starting the city of Denver. A principal street of the city and a county of the state bear his name. The biographies cited say that he built the first house in Denver, but, like all claims of this "first" sort, this one is stoutly denied. Early in 1863, probably, Larimer returned to Leavenworth where on August 12 of that year he became captain of Company A, Fourteenth Regiment Kansas Volunteer Cavalry and served until the regiment was mustered out in June, 1865. Though his physique was stunning, he rose to no higher rank than the captaincy. Fort Scott, Kansas, was the headquarters of the regiment during its entire career, and its colonel, Charles W. Baird, was commander of the post. The regiment was actively engaged in frontier warfare. Captain Larimer returned to Leavenworth at the end of the war and died there May 16, 1875. He was of rolling stone "advanced" disposition. He was a radical abolitionist before he left Pennsylvania, and he championed the cause of woman suffrage in Nebraska, for which he suffered ridicule by politicians in general and J. Sterling Morton in particular. He joined the Liberal Republican movement in 1872, and was a candidate for the office of presidential elector on the Greeley ticket. He was president of the board of trustees of the institution for the blind at Wyandotte and a member of the board of managers of the reform school at Leavenworth. *The National Cyclopaedia of American Biography*, IV, 390; XIII, 515; *Appleton's Cyclopaedia of American Biography*, III, 618; *Annals of Kansas*, pp. 356, 493, 583, 584; *Kansas Historical Collections*, VI, 456; VII, 446, 452; VIII, 519, 530; XIII, 72; *Bancroft's Works*, XXV, 370, 424.

In both of the biographies here cited it is erroneously said that Captain Larimer was colonel of the Third Regiment Colorado Infantry. Under date of January 31, 1918, Mr. J. C. Smiley, Curator of the State Historical and Natural History Society of Colorado, wrote to the editor as follows:

In reply to your inquiry in relation to the military record of Colonel William Larimer, I submit the following statement from our records:

"Early in the autumn of 1862, Governor John Evans was authorized to recruit another regiment, of which General William Larimer was to be Colonel under instructions from Washington, and which was to be Third Colorado Infantry. The difficulties in filling the ranks of the Second Regiment should have suggested those which attended and, to a great extent, negatived the Third. However, the Third was undertaken with some enthusiasm and determination. At that juncture General Larimer, realizing the improbability of completing the regimental organization, withdrew his connection with it."

We have no record of General Larimer's further military service during our Civil War.—Ed.

heard of General Larimer as a banker and politician of Pittsburg, Pennsylvania. He had been a disappointed candidate for governor and had failed as a banker, so I was astonished to find him here, squatting on a magnificent prairie and running a sawmill. He was living with his family in a board shanty in apparent poverty, but with some evidences of former wealth about him. He was a magnificent, brainy man and bore his changed condition with fortitude. About a year after this, when the news of the discovery of gold at Pike's Peak stirred the whole country, the people of Nebraska were the first to rush for the new El Dorado. General Larimer hurried there and was one of the first settlers on Cherry Creek where he helped to establish Denver, and one of its streets bears his name. He was a prominent man in the early days of Colorado, and I presume deceased there.⁸

This reference to Denver and Colorado opens a broad field, which is so intimately related to Nebraska that I feel constrained to say something about it. When the discovery of gold in the Pike's Peak field was first reported, there was a hegira from Omaha. All the loose and unattached men rushed there, and many of them became permanent settlers. William N. Byers took out a press and font of type on a wagon, 600 miles across the prairie, and established the *Rocky Mountain News* and was afterwards postmaster of Denver and of importance in business affairs. David Moffat, a boy of about eighteen, was among the number. He started a newspaper stand, a stationery store, and progressed rapidly, became president of a bank, a builder of railroads and is called a millionaire. There was a host of just such men who assisted in building up Denver.⁹ In fact Colorado is the child of Omaha.

A man who lived at Florence, just north of Omaha,

⁸ See preceding footnote 7.—Ed.

⁹ For biographies of William Newton Byers, see *History of Nebraska*, I, 224; also *The National Cyclopedia of American Biography*, XIII, 514; of David Halliday Moffat, *ibid.*, VI, 441.—Ed.

hitched up his team and started for Cherry Creek. His name was Steele. In less than a year afterward he called on me and in conversation informed me that he was the squatter governor of the Territory of Jefferson. The vast aggregation of people of all kinds, good and bad, made it necessary to form a government, and so, in mass convention at Cherry Creek, the Territory of Jefferson was organized.¹⁰ Officers were elected, courts established, trial by jury was had, and swift punishment was meted out to all offenders. When all this had been done Congress acted.¹¹

The spring of 1857 opened beautifully. The cold and gloom and hardships of winter passed away, and all nature smiled. There was an influx of men from the east and south. I can remember a few of them only—Gilbert C. Monell, James W. Van Nostrand, James M. Woolworth, John I. Redick, David D. Belden, Joseph H. Millard, Judge Clinton Briggs, all of whom were identified more or less with the early history of Nebraska. Lumber to build houses with was a prime necessity, and the little that could be obtained from St. Joseph, Missouri, brought exorbitant prices. I saw it all and decided to supply the demand. I purchased a large quantity in Chicago, sent it in barges through a canal, then existing, to the Mississippi River, floated them down the river to St. Louis, loaded two steam-

¹⁰ For an account of the attempt to establish the Territory of Jefferson and the state of Jefferson, see *Bancroft's Works* (history of Nevada, Colorado, and Wyoming) XXV, 403-413; for biographies of Robert W. Steele, *ibid.*, 410, *History of Nebraska*, 1, 364.—Ed.

¹¹ An act of Congress passed February 28, 1861, provided the Territory of Colorado with a legal government. Mr. Gwyer exaggerates somewhat the activities of the provisional government. Its authority was never generally recognized by the inhabitants, whose allegiance was divided between the legitimate territorial government of Kansas, organizations extemporized by miners, and the similar organizations of the Territory of Jefferson. The northern boundary line of Kansas ran about eighteen miles north of the first settlement, now the heart of Denver, and a short distance south of the southern extremity of Boulder whose site was therefore within Nebraska. Most, though not all, of the mines of the Pike's Peak gold field were south of the Kansas-Nebraska boundary.—Ed.

boats bound for Omaha to the water's edge and paid freight bills to the amount of three hundred dollars. The freight added to the cost in Chicago involved an expenditure of \$20,000. I began selling at prices which seem astounding at the present time. Common rough boards and studding sold at \$60 to \$75 per thousand, weather-boarding at \$100, flooring at \$120, shingles and lath at \$12 per M., and sashes and doors at correspondingly high prices. The profits were enormous, and everything seemed to indicate a grand success. Money was abundant, all brought in from the east; lots and lands were selling, without any title but "claims", to ready purchasers; all was at flood tide, when, suddenly, without warning, news came of the failure of the Ohio Life and Trust Company followed by the collapse of numerous banking institutions east of us. The speculative bubble burst wide open. The Nebraska banks closed. Every one who had money in them lost it, and every one who had money anywhere lost it; for there was no one to cash it. This condition was a deathblow to everybody in Nebraska. I was caught, not because I owed money, but because I could not sell anything I owned. No one could buy lumber, so my stock was utterly unsalable. I could not sell sufficient to purchase provisions for my family. It was the ruin of all my high ambitions. The question was no longer how I could best promote the state of Nebraska but how I, personally, could exist at all. But I did live through it some way,¹² and my ambition was not

¹² Mr. Gwyer's black picture of financial conditions is rather too uniform. For example, the Platte Valley Bank, at Nebraska City, one of seven banks of the territory which were chartered by acts of the legislative assembly, was uniformly solvent and redeemed all of its money bills, and this was true also of the Bank of Dakota, at Dakota City, which was operated without legal authority. The cause of this remarkable condition was that there was no stable property in the territory as a basis for sound credit until Nebraska City became a depot and reshipping point for supplies for the army which was sent to Utah in 1857 and 1858 to suppress the Mormon rebellion. The Kountze brothers, who backed the Bank of Dakota, had gained credit outside of Nebraska. Samuel E. Rogers, who afterward became a substantial

entirely crushed. At the next election¹³ I was chosen a member of the House of Representatives, and, from the time of my election to the beginning of the session, I prepared bills to be presented to the House. They were all for the benefit of the people. I spent weeks writing a revenue act. It was no small matter to think out the ways and means of providing a revenue for the territory which should be just and proper for all citizens. In due time this bill¹⁴ was reported back to the House, and then was com-

citizen of Omaha and had a prosperous private bank there in 1856, said: "The panic of 1857 set in in the autumn of that year and the then village of Omaha was at once almost deserted. The population of about 2,000 was rapidly reduced to about 500 by the spring of 1858, by which time nearly all business was suspended." Nebraska State Historical Society, *Proceedings and Collections*, second series, II, 116. In an address at the state fair on September 26, 1878, Algernon S. Pad-dock, then United States senator for Nebraska, said: "When I first arrived at Omaha, after nearly a week's journey by steamboat from St. Louis, the entire population . . . then sojourning there could not have exceeded fifteen hundred at most. And, as I soon learned, not one in twenty of these had any visible means of support, any faith in the country, or any expectation whatever other than to leave as soon as he could sell his lot in town or his preëmption claim in the country, which, quite likely, he had acquired, not by an investment of hard earned money, but by certain circumlocutory processes, the invention of speculative genius."

For a full account, by the present editor, of the condition of the banks of that period see Watkins, *History of Nebraska*, II, chapter I; also chapter VIII, by Henry W. Yates. On page 312 Mr. Yates describes the demoralized economic conditions at this time.—Ed.

¹³ The election of members of this legislative assembly—the fifth—was held August 2, 1858.—Ed.

¹⁴ House Bill No. 6, "An act for the collection of the revenue", presented September 27, at the session called by Governor William A. Richardson to meet September 21, 1858; but inasmuch as there was no provision in the organic act for the payment of members for special sessions, an act was passed on October 2 which declared that the session should be deemed regular from October 4, thus merging the special and regular sessions into the fifth session. See further, Watkins, *History of Nebraska*, I, 360; *House Journal*, fifth legislative assembly, p. 60. Mr. Gwyer tried unsuccessfully to have his bill referred to the judiciary committee instead of the committee of ways and means, which on October 13 reported as follows:

Your committee, to whom was referred
H. R. No. 6, "A bill for the collection of the revenue,"
Beg leave to report a new bill as a substitute.

Your committee would submit, that to arrange a Revenue Bill, so as to work smoothly, without clashing, is perhaps the most difficult duty required in the formation of a new code of laws; and though your committee have used great care, they are by no means certain that the bill reported is without fault, and on account of its importance, would ask of the House its most careful consideration, and to that end would recommend that the bill be laid on the table to be printed.

On motion of Mr. Gwyer,
The report was accepted, and the bill ordered printed. *House Journal*, fifth legislative assembly, page 98.

After the third reading of the bill, on October 29, Mr. Gwyer asked that his protest against a part of section 31 be entered on the journal, which being denied, his request to be excused from voting was granted. The bill was then passed by a vote of 25 to 3. *Ibid.*, p. 182. On the next day the Council made short work of the bill. It was presented on the 29th, taken up on the 30th and read twice, the second time by title under suspension of the rules; considered briefly in committee of the whole, read the third time and passed by a vote of 9 to 2, William E. Moore of Douglas county and Elmer S. Dundy of Richardson voting no. *Council Journal*, fifth legislative assembly, pp. 194, 201, 202. The title of the bill as passed is "A Bill For An Act to Provide for the Valuation and Assessment of the Real and Personal Property, and for the Levying and Collection of Taxes in the Territory of Nebraska."

It ought to be improbable, at least, that the committee appropriated Mr. Gwyer's bill, reported it as "a new bill", without change, and specifically represented that it was their own creation. Following is the statement accompanying the bill:

Your committee would submit, that to arrange a Revenue Bill, so as to work smoothly, without clashing, is perhaps the most difficult duty required in the formation of a new code of laws; and though your committee have used great care, they are by no means certain that the bill reported is without fault, and on account of its importance, would ask of the House its most careful consideration, and to that end would recommend that the bill be laid on the table to be printed.

S. G. DAILY, *Chairman*,
J. H. SEYMOUR,
LEWIS M. KLINE,
E. P. RANKIN,
WM. C. FLEMING.

On the other hand, a member of this selfsame assembly pleaded in palliation of an irregularity previously committed by himself, "You are aware that is the way things were done in those days"; and not all of the signers of the report would have balked at the trick which Mr. Gwyer accuses them of playing through delicacy of conscientious scruple. But between them time and carelessness have so dealt with the evidence touching this question of veracity that it may never be settled.—Ed.

mitted a most shameful and dastardly act which should meet the scorn and detestation of all honorable men. My plain and simple title of the bill to provide revenue for the territory of Nebraska was struck out, and a long list of words to make it more imposing was substituted, and reported back as their bill. The text was not changed in any way. I never received a word of commendation for the work I had done, and the people of Nebraska never knew that I was the author of the revenue act, and the actors in this shameful deed smirked over it as a smart trick.

Notwithstanding the injustice that was done me, I succeeded in placing on the statute books an act which is immortal and which will live to the credit of Nebraska as long as the state exists. Noting that county clerks and recorders of deeds were charging ten cents every time a citizen wanted any information about the records, I thought this should be remedied and, sitting at my desk one day in the House, I wrote a short bill, "An act to authorize every citizen of Nebraska to examine the public records",¹⁵ presented and passed it. It went through without a thought of its importance. I am willing to admit I did not myself see its far reaching results. It has saved many thousands of dollars in the pockets of the people: all records of the state, and counties, and courts come under this sweeping act; in fact, every record of a public

¹⁵ House Bill No. 13, "An act to authorize citizens to view the public records"; introduced September 29, read first and second time, referred to committee on judiciary, Oliver P. Mason, chairman; reported back amended by striking out "at all seasonable hours", which was adopted; ordered engrossed for a third reading "on tomorrow"; September 30, read third time and passed without roll call; October 1, reported to Council and read first time; October 2, read second time and "ordered engrossed and read third time tomorrow"; Monday, October 4, read third time, ayes and nays demanded on its passage, passed 6 to 2, George W. Doane of Douglas county and William H. Taylor of Otoe voting no. For the act see *Laws of Nebraska*, 4-6 Ter. Sessions, p. 221. It appears as section 5595 of *The Revised Statutes of the State of Nebraska 1913*, without other change than the substitution of "state" for territory.

character is open to every citizen, high or low, rich or poor, learned and unlearned, nothing may be concealed from them. This act was used with great effect by Attorney General Estabrook in the impeachment case of Governor David Butler. General Estabrook walked into the office of the state treasurer and demanded a "show up", and he got it. When the state government was organized, the territorial statutes were examined by a commission appointed for that purpose, and this act was incorporated in the statutes of the state. The people of Nebraska, lawyers included, seem to think they were born to it, that it is a sort of birthright, when the fact is it is entirely a creature of legislation. It was a Nebraska baby, and I am the father of it. The eastern states can learn a lesson from Nebraska. States that have existed from the time of the Mayflower have no similar law.¹⁶

¹⁶ This principle of which Mr. Gwyer claims to be the originator had been long established both by the common law and by statute. Justice Casody of the Wisconsin supreme court stated the common law principle briefly, as follows: "Counsel contends that the right to inspect and copy public records is confined to those having some interest in the particular record sought to be inspected or copied, and does not extend to one seeking to do so from mere curiosity, or for his own private gain. Such seems to be substantially the rule at common law." *Hanson vs. Eichstaedt*, 69 Wis., 538. In his opinion Judge Casody quoted from a Michigan case cited by counsel the statement that "there is no common law right to make copies or abstracts of public records for speculative purposes"

Section 50, article 2, title 2, chapter 3, part 3 *Revised Statutes of New York*, 1852, provided that records of deeds and mortgages in all counties of New York "shall at all proper times be open for the inspection of any person paying therefor the fees allowed by law." The New York court of appeals declared that

The records are, therefore, public records which every person has the right to inspect, examine and copy, at all reasonable times, in a proper way, and the register cannot deny access to his office or to the books for such purposes, to any person coming there at a proper time and in an orderly manner. *New York Reports*, XCIX, 623.

Section 65 of chapter 117, *Revised Statutes of Wisconsin*, 1858, provided that all records in the offices of county judges "shall at all reasonable times be open to access and inspection by any person having any business therewith," and section 156, chapter 13, of the same

I pass over the five years of the rebellion, as that may appear at another time, and proceed to say that I returned to Omaha in 1866. I was elected to the senate in 1873, was president of that body, and for a short period acting governor. I had prepared a number of bills which were introduced by a colleague, at my request, and some were enacted. I was a member of the constitutional convention of 1875 which framed the present organic act of the state. I there did a good service for the benefit of all the people. The state owns many millions of acres of the lands of the state. A beneficent government, prodigal of its lands and considering education as essential to good citizenship, placed in the enabling act of 1854 a clause donating to the state of Nebraska sections 16 and 36 in every township. This is one-eighteenth part of all the lands in the state to be used for educational purposes; it was a wondrous endowment, and no government heretofore had ever done such a thing.¹⁷ This land might be sold, but the proceeds

statute, provided that "All books and papers required to be kept in" all the county offices "shall be open for the examination of any person, and any person when so examining the same may take minutes therefrom . . ." This provision, in substance, is contained in section 137, chapter 10 of the Revised Statutes of 1849. The statutes of 1858 provided that the records of the secretary of state should be open to inspection by the governor and committees of either house of the legislature. The statutes of many states had provided for general access to public records, in some cases free of charge and in others on payment of a fee, long before Mr. Gwyer wrote the foregoing paper. Other states have preferred to leave the question subject to the common law.—ED.

¹⁷ This was the organic act, a body of law authorizing the organization of the territory and for its government. The enabling act, passed in 1864, authorized the people of the territory to adopt a constitution preparatory to its admission as a state into the Union. The statement that this grant of two sections of land from each township of Nebraska was the first of its kind is quite erroneous. A like provision had already been made in the organic act of Oregon (1848), Minnesota (1849), New Mexico and Utah (1850), and Washington (1853); also in the organic act of Kansas, passed simultaneously with that of Nebraska, and it is in all the subsequent organic acts—the last one for Oklahoma, passed in 1890—with the exception of Arizona, where conditions were peculiar. The enabling act for the state of Arizona, passed

of sales must be kept perpetually for the use of future generations. The state organized a board of public lands to take charge of these lands and sell the same at their discretion. It was a sacred trust for the present and future. I found the board was selling some of these lands at what I thought was very low prices, in some instances as low as two or three dollars per acre. I was determined that this should not continue. I wrote a clause and secured its adoption in the organic act, prohibiting the board from selling any of the school lands for a less sum than the minimum price of seven dollars per acre. And there it stands to-day, beyond the reach of the legislature, or the chicanery of any man, the lands cannot be frittered away, they are saved for value now and in the future; and can

in 1906, gave four sections of every township for the support of common schools. The enabling act for the state of Oklahoma (1906) provided a fund of five million dollars for the support of common schools, in lieu of the usual grant of lands for the Indian Territory which was incorporated in the state. The enabling act of Utah (1894) gave an additional section from each township. Prior to the grant in the organic act for Oregon it had been the custom to give, through the enabling acts for states, section 16 of each township for the support of common schools. Indiana in 1816, Illinois in 1818, Alabama in 1819, Missouri in 1820, Arkansas and Michigan in 1836, Iowa in 1845, Wisconsin in 1846 received this allowance.

The common school system became the beneficiary of the abundance of public lands at an early time. Thus, the New York constitution of 1821 appropriated the proceeds of all lands belonging to the state as a perpetual fund for the support of common schools; the Ohio constitution of 1851 provided that the principal of all funds arising from the sale or other disposition of all lands granted or entrusted to the state for educational or religious purposes should forever be preserved inviolate and undiminished; Texas with a provision in her first constitution that no lands then held or thereafter granted for the support of schools should be alienated; the first constitution of California (1849) constituted the proceeds of all land that might be granted by the United States for the support of public schools and the 500,000 acres granted to each new state by the act of 1841, a perpetual common school fund. The constitutions of the reconstructed southern states, such as Florida (1865), North Carolina and South Carolina (1868), Virginia and Tennessee (1870), alike jealously guarded the proceeds of land granted by Congress or otherwise acquired.—Ed.

be reached only by changing or abolishing the organic act. When the work was all done, I was complimented by a vote of thanks of the convention for work well performed.¹⁸

¹⁸ The constitution which had been painstakingly prepared by a convention held in 1871, but which was rejected by a small majority of voters through the hostility of railroad and religious corporations, was used as a model by the convention of 1875. Accordingly most of the sections of the article on education, which was reported by Mr. Walther, chairman of the committee on education, school funds and lands, in the convention of 1875, of which committee Mr. Gwyer was a member, were copied verbatim from the corresponding article of the constitution of 1871. The section in question—fixing a minimum price of seven dollars an acre for school lands—is a literal copy of the corresponding section of the constitution of 1871. *Constitutional Conventions*, III, 456, 543, 544. It was section 7 of the article on education, which was reported to the convention by Experience Estabrook, as chairman of the committee on education, school funds and lands. *Ibid.*, I, 253, 254. In the convention, Mr. Seth Robinson, a delegate from Lancaster county, moved to reduce the minimum price from seven dollars to three dollars, and the motion was rejected without debate by a vote of 6 ayes to 33 nays; whereupon the section was adopted by a vote of 28 to 12. Mr. Robinson explained his motion as follows:

I will state my reason for this, Mr. President. I believe the legislature raised the price of these lands to seven dollars an acre, and I think they ought to be sold for that price if we can get it, but I would like to allow the legislature after they have sold all they can at that price to have the privilege of putting it down to even three dollars. I know that there are some of the lands in this county that will not sell for twenty-five cents an acre, in section sixteen and thirty-six. *Constitutional Conventions*, II, 263.

Section 12 of an act of the legislature passed June 24, 1867, to provide for the control of school lands and of the proceeds of their sale, contained this clause:

Provided, That no lands shall be sold for less than seven dollars per acre in addition to the appraised value of the improvements on the land. *Laws of Nebraska*, third session (special), p. 40.

Thus the seven-dollar restriction on the price of school lands had been incorporated in both statute and constitution long before it was continued in the present constitution. Moreover, the convention of 1875 did not thank Mr. Gwyer for anything he may have had to do toward the protection of school lands or funds, but it did thank him for services as chairman of the committee on engrossment and enrollment. *Constitutional Conventions*, III, 675.—ED.

NEBRASKA IN THE FIFTIES

BY DAVID M. JOHNSTON

Soon after Secretary of State Cuming became acting governor of the territory of Nebraska, he issued a proclamation for an election to take place December 12, 1854, to elect one delegate to Congress and twenty-six members of the House of Representatives and thirteen members of the Council.¹ There were four candidates who hoped to represent the new territory in Congress—Bird B. Chapman of Ohio, Hadley D. Johnson of Iowa, Napoleon B. Giddings of Missouri, and myself of St. Joseph. I procured a mule, saddle, bridle and a pair of spurs and thus equipped, in November, 1854, something after the fashion of the knights of old, started to seek my political fortunes in the new territory. Here the issue was the location of the capital. Two places were candidates for this honor, and the waters of the Platte separated the interests and votes of the contestants. As but few voters were living in the territory at this time, the canvass, by common consent, was transferred to the populous settlements on the east bank of the Missouri River in the states of Iowa and Missouri.

My journey along the east bank of the Missouri was a lonely one, but I was cheered and animated by the pleasing fancies of Hope that pictured in the near future the reward of solid greatness and congressional honors. I crossed the

¹ Thomas B. Cuming, the first secretary of the territory of Nebraska—not secretary of state—took the official oath on August 3, 1854, at Washington, D. C. According to a provision of the organic act establishing the territory, the secretary became acting governor at the death of Governor Burt, which occurred at half past three o'clock in the afternoon of October 18, 1854. Governor Burt took the official oath at Bellevue on October 16, 1854.—Ed.

Missouri at a place called Bennet's Ford ² and entered the new territory for the first time in November, 1854. Around me spread the silent forest stripped of its foliage, and the dry grass at my feet bore the somber tint of decay. I had traveled but a short distance when I heard the sound of voices from a ravine a few rods away. My mind for a few moments threw off the gloom that had settled upon it, and the prospect for making my first stump speech was at hand. But imagine my surprise and disgust when I found my prospective audience to be a score of Indians feasting on a slaughtered hog. Now I discovered my mistake in not having acquired some knowledge of the Indian language before venturing into the new country.

However, I pushed forward on my patient and jaded mule for old Fort Kearny, and, as I ascended the bluffs that overlooked the Missouri River, I saw to my surprise and pleasure a short distance ahead a log house, which proved to be the dwelling of a white man. I stopped, and the woman of the house invited me in, but to my surprise I again found about a dozen Indians who were seated on the floor, eying with close attention the cookstove in the center of the room. The cheerful fire was very comforting to my chilled limbs, and a frying pan full of meat sent forth an appetizing odor. While the woman, young and sandy haired, was kneading bread at a small table with her back to the stove, an Indian would slip up, snatch a piece of meat from the pan, hide it under his blanket and retire from the house to devour his prize. This was repeated several times by the Indians before the unsuspecting eye of the hostess caught one of them in the very act, with his hand on the meat. In a moment she was in a storm of passion, and springing toward them ordered them out of

² About 1854 Gideon Bennet established a ferry at Otoe City at or near the present site of Minersville, a station on the Burlington railroad six miles south of Nebraska City. As early as 1849 Otoe City was an important crossing for emigrants to Utah and California. In 1857 the traffic was sufficient to require a steam ferryboat.—Ed.

the house. This was a trying time to me, and for a few moments my mind was filled with horrible pictures of Indian barbarities. But the brave little woman stood her ground with firmness, armed with a broom, and at last called on me to help her. I put on a brave front and, with as stern a look as I could assume and in a voice choked with fear, shouted the only Indian word I knew, when to my great astonishment and relief the thieves left the house and retired to their camp a short distance away.

After eating dinner with my hospitable hostess I continued my journey to Fort Kearny and arrived there without further adventure. I stayed all night with a Major Downs³ who had been in the regular army, in the old

³ For accounts of the career of Hiram P. Downs see Nebraska State Historical Society, *Transactions and Reports*, I, 38-41; Watkins, *History of Nebraska*, I, 224; *ibid.*, II, 168. Downs held various military offices, the highest that of lieutenant colonel of the First Regiment Nebraska Volunteers, organized in 1861. *The Nebraska City News*, January 18, 1862. August F. Harvey, editor, explains and defends the resignation of Lieutenant Colonel Downs in the following somewhat partisan fashion:

Some anxiety having been manifested to know the reason of Lt. Col. Downs' resignation, we state what we know of the matter. When the Regiment was organized, it was upon the distinct understanding, expressed in a letter from Mr. Secretary Cameron, that the Regiment was *not* to be ordered out of the Territory. Many of the officers and men repaired to the rendezvous, leaving their private business unsettled, with the expectation of having an opportunity to return and arrange their personal affairs, before going into active service. This was especially the case with Lt. Col. Downs.—When the order came to go to Missouri, (an order obtained mainly through the anxiety of Col. Thayer to show himself,) Lt. Col. Downs, went with the 1st battalion; and he did not even have time to visit his family, much less to attend to any business. After six months of active service in the field, during which the Lt. Col. did not leave the regiment scarcely a day, and during which he bore, in fact, the responsibilities of the reputation of the regiment, he asked for a leave of absence, so that he could visit his family and arrange his private matters. The leave was denied him, and the only alternative left, whereby he could save his personal business from ruin, was for him to resign. His resignation was tendered for these reasons. The Lt. Col. as a brave soldier, has not sought to shirk any duties towards the Territory, his country or flag; and stands ready as ever to answer the call of the first or defend the honor of the last.

His friends are endeavoring to procure for him a commission as Brigadier General. Through experience, and ability, he deserves it, and we hope the President will appoint him. We should be glad to see him in a position where he may have for himself all the credit which attaches to a faithful and able performance of a soldier's duty.

blockhouse which he had converted into a hotel, and this, with the dismantled fort and five or six other buildings, constituted the town, which under the name of Nebraska City had recently been started by S. F. Nuckolls and some others.⁴ Next morning I met a few friends and showed

⁴The continuous occupation of what is now the site of Nebraska City began late in May, 1846, with the arrival of General Stephen W. Kearny and his command of one company of the First Dragoons and one of the First Infantry, with orders to establish a military post at the place then called Table Creek. The ground for the buildings was at once laid off and the plans for them decided upon. But the war with Mexico having been declared on the 13th of the same month, the dragoons left for Fort Leavenworth on the 30th, and the other company arrived there on July 13. Furthermore, by about the first of June the war department had decided to abandon the enterprise altogether and establish a substitute post immediately on the route to Oregon, which was done in May, 1848. Suspension of the work at Table Creek was ordered on June 22, 1846. But before Captain W. E. Prince and his company, the First Infantry, left Table Creek they built the blockhouse and one or two other buildings. Captain Prince left these buildings in the custody of a caretaker. On September 15, 1847, Lieutenant Colonel Ludlow E. Powell's battalion of Missouri Mounted Volunteers arrived at the abandoned post and remained there until April 28, 1848, when it proceeded on its way to establish new Fort Kearny. On or about February 1, 1854, Charles H. Cowles, who became a member of the Council of the first Legislative Assembly of the Territory of Nebraska, and two others, Green and Johnson by name, agreed at Linden, Missouri, forthwith to establish a town on the former site of old Fort Kearny and to name it Nebraska City. Cowles went at once to carry out the design and, finding Sergeant Hiram P. Downs in custody of the fort of two or three buildings, of the old post, gained his permission to squat on the premises by taking him as a partner in the enterprise instead of Johnson. There had been no regular military reservation made, so that the proposed town site belonged to the Oto Indians until March 15, 1854, when they ceded to the United States all their lands west of the Missouri River, excepting a reservation on the Blue River. But the president did not confirm the treaty until June 21, and it took a long time for news of the ratification to reach the Indian agent. In the meantime Stephen F. Nuckolls had bought an interest in the proposed town, and afterward other partners were taken in. The city of Nebraska City was not legally established until the Legislative Assembly passed the act of incorporation, March 2, 1855. The war department had forbidden settlement by whites upon the Oto lands, so the town site scheme was dropped; but Cowles had erected a dwelling house for himself and a

them my letters and revealed to them the object of my visit.

My next stop was at Omaha, the place selected by the governor for the meeting of the first legislature of the territory.⁵ Omaha was at this time simply a name; there were only one or two houses, but the site was beautiful and the town soon commenced growing rapidly. At the time of my first visit I stayed all night on the town site and was kindly entertained by one of the proprietors, a Mr. Goodwell, at his home, a dugout, which he called "a hole in the ground No. 6." We played euchre and old sledge till a late hour.

The next morning I started back to old Fort Kearny and the southern part of the territory. I found a few

building for a store, and in June, 1854, he bought a stock of goods at St. Louis and soon proceeded with his business. Under instructions from Washington Major George Hepner, the agent of the Oto Indians, formally protested against his carrying on the business, but through dilatory tactics, including presents of money to the Indians, practical interference was put off until news of the confirmation of the treaty arrived. A new set of men afterward entered the town site.

For the accommodation of the Oto agency, of travelers, and of desultory traders, a post office, called Table Creek, was established at the old military post, and John Boulware, who had established a ferry on the Missouri River there, either in 1846 or 1847, was appointed postmaster on December 20, 1853; but the name of the office was changed to Nebraska City, March 14, 1855, as soon as practicable after the Legislative Assembly had granted a charter to the town under that name, and Mr. Cowles was then appointed postmaster. It seems fair therefore to give Mr. Cowles credit for having started the movement to establish or organize Nebraska City and originating its name. He told the story of his adventure in Nebraska State Historical Society, *Transactions and Reports*, I, 37. Hiram P. Bennet introduced in the Council the bill to incorporate Nebraska City; but he came there from Glenwood, Iowa, only just in time to be elected councilman. Mr. Cowles had preceded him by nearly a year and before the passage of the bill for the organization of the territory.—Ed.

⁵ The choice was not made until December 20, 1854, when Thomas B. Cuming, the acting governor, issued a proclamation "convening said Legislative Assembly at Omaha City, Nebraska Territory, on Tuesday, the sixteenth day of January, next."—Ed.

settlers on Muddy Creek, now in Richardson county. Here I selected a claim for my home. This was a very beautiful and attractive country, well watered and wooded, with a soil unsurpassed in fertility and supporting heavy and luxuriant grasses. Having seen the voters in Richardson county, about thirty in all, I crossed the river to try my hand at electioneering in Missouri and Iowa. Here I met with splendid success, for I had enough votes promised me to beat all my competitors in the race, and the voters promised to be on hand on the day of election. But how uncertain are all the affairs of human life. On my way back I found that the Missouri was too dangerous to cross; it was full almost from bank to bank, and logs, trees, and ice floated down in wild confusion. No boat could be found to take me across; and now, standing on the east bank of the swollen stream, my patient mule by my side, for the first time I saw in the distance the horrible picture of defeat. However, in a few days I was able to cross, and saw my Richardson county friends. Then I started for Nebraska City; but again I found myself water bound by a freshet in the Nemaha. My long absence from Nebraska City was construed into a withdrawal from the race, and with this rumor my hopes for Congress expired. This was but a few days before the election, and my friends on Muddy Creek put me on the track for membership of the House of Representatives of the territory and I was elected. My election was celebrated, in the old-fashioned way, by a big dance. A boy on a fleet horse, with two empty jugs and fifty cents, was dispatched to Missouri and instructed to return with all possible haste. A log cabin twelve by fifteen feet, situated on the bank of the Muddy, near a beautiful grove, was the scene of festivities. One corner of the room was selected by the judge of election to count the votes, while the remainder was devoted to the dance, and an old-fashioned fireplace furnished both light and heat for the occasion. Seven couples occupied the floor and marched to the music of the violin. The harmony of the

dance was not interrupted until our messenger returned with the jugs and then only long enough to give the men time to inspect their contents. The revelry continued until a late hour, and its pleasures were terminated only by the exhaustion of our supplies.

The images of these good old days are still bright on the canvas of our memory, and furnish thought for amusement and reflection; and, though distance of over fifty years separates us from scenes I am describing, a faithful memory ever will retain the joy I felt at my election. This distinguished honor in a great measure healed the wounds of my defeat for Congress, and I cheerfully obeyed the call of the governor to take my seat in the first Nebraska legislature. This met at Omaha, January 16, 1855, with a full House and Council, and nearly every state in the Union was represented in that legislative body. Our meetings were held in a small brick building of two stories with an office for the governor on the first floor. Omaha then had less than a dozen houses, the greater number of which were saloons, but new ones were going up all the time, and the place was a scene of bustle and activity. The hotel, the Douglas House—landlord, Mr. Wells—was besieged by impatient legislators before it was completed, and in spite of the cold the unplastered rooms were soon filled. Here Governor Cuming and his wife had rooms, the best in the house.

In the legislature the great issue was the location of the capital of the new territory. Nebraska City on the south of the Platte and Omaha on the north were contending with great zeal for the prize, but not with equal success, for Omaha after a hard struggle was victorious and started on the road to prosperity and greatness. As very few of the members had been in the territory more than a few days prior to the election, it was amusing to hear them in the heat of debate address one another as "the gentleman from New York", "the gentleman from Iowa", or some

other state. The governor had divided the territory along the river into counties and had given them names, and the members claimed to live in those counties and to represent them; but no serious difficulty arose from this fact, for by general consent the question of settlement was not raised in any other way than what I have stated.

Among those who came to claim their seats was J. Sterling Morton, who was then a young man. I prosecuted his claim before the legislature, but was unsuccessful, and Mr. Morton was compelled to retire, though he and his wife remained in Omaha during most of the session. I claimed that the legislature had the right to go back of the returns and count the votes in disputed territory, but the legislature did not uphold my view.⁶

The first lawsuit in Nebraska was before a justice of the peace and came about as follows: The landlord of the Douglas House,⁷ Mr. Wells, had been robbed of a half cheese, and two men were charged with the crime. At this time no courts had been legally provided for and no criminal laws been enacted. The governor had been frequently importuned by a political friend of his living in Iowa to appoint him a justice of the peace for Omaha, so, partly as

⁶ Mr. Johnston's statement of the case is not clear. In accordance with a provision of the organic act, the acting governor established eight counties, and apportioned members of the first Council and House of Representatives among them. Four councilmen and eight representatives were allotted to Douglas county to be voted for at two places, Omaha city and Bellevue. The voters of the Bellevue precinct supported a set of candidates distinct from those of Omaha City. Acting Governor Cuming of course gave certificates of election to the Omaha candidates, who received more than twice as many votes as were cast for their rivals. With some hope that the anti-Omaha, or South Platte members might be numerous enough to seat them, the Bellevue candidates contested for the seats of the Omaha candidates, but unsuccessfully. See Watkins, *History of Nebraska*, I, 198.—Ed.

⁷ The construction of this hotel, situated at the southwest corner of Harney and Thirteenth streets, was begun by Daniel Lindley in the fall of 1854, when the population of the town was about 100. It was for some time a general public rendezvous. Governor Cuming was one of its owners.—Ed.

a joke and partly to free himself of the importunity, the appointment was made. Armed with his Iowa statutes, the justice opened an office and litigation was not long in coming. Wells filed a complaint against two men suspected of stealing his cheese, who were arrested and brought before the pretended justice for trial. They employed me to defend them, and the owner of the cheese appeared for the territory. When the case was called for trial the defendants demanded a jury, and though the judicial mind was not clear on that point, a jury was ordered by virtue of the Iowa statute. But now another difficulty still more serious than the first presented itself. There were few people in the county, and no statute had been passed prescribing qualifications for jurors. However, it was agreed, finally, to select the jury from the members of the legislature, and accordingly they were sworn with all due solemnity under the laws of Iowa, and the trial proceeded, being held in the office of the Douglas House. The landlord, who was both prosecuting attorney and plaintiff, introduced his evidence and proved the charge beyond all doubt. But the defendants challenged the authority of the governor to appoint the justice and denied his right to try the case.

The justice had maintained the dignity of his court, up to this time, with great propriety, but this was too much for him, and he flew into a most injudicial rage; but an apology from the defendants' counsel somewhat appeased his anger, the motion was overruled and jurisdiction sustained. The defendants, through their counsel, now asked for a subpœna for the governor. After some dispute as to whether a governor could be lawfully subpœnaed, he appeared and testified that he thought he had no right to appoint a justice of the peace; but, nevertheless, the justice held that he had a right to try the case and sent it to the jury, who, after a short time, returned a verdict of not guilty. Now the prosecuting witness and landlord flew into a rage and furiously ordered the jury out of his house.

This was a sore turn of the trial, for most of the jurors were boarders at the hotel, just opened, and there was no other boarding house in the town large enough to accommodate them. Finally, by the persuasion of friends, the landlord relented, and thus ended the first lawsuit in Nebraska.

It was whispered that some members of the Legislative Assembly had no constituents in the counties which they claimed to represent; and a report was current that one member took a few men in a two-horse wagon and went into the territory some ten or fifteen miles and then stopped and held the election in the wagon, not knowing whether or not he was even within the county he claimed to represent. However, no one challenged his right to his seat, and he was an excellent member.⁸ The country was full of emigrants and speculators, and many members owned or had an interest in town sites which existed on paper and nowhere else, but which they were exceedingly anxious to sell to strangers. With the purpose of expediting the sale of his shares in town sites one member got up a turkey roast and invited the governor, his wife, and myself, with a few other friends, to his boarding house to share the treat. He claimed that the turkey was killed on his town site; and we all agreed to praise it and boom his town site to the best of our ability. Accordingly, when the dinner was served, quite a number of strangers being seated at the long table,

⁸ Hascall C. Purple became a member of the House of Representatives by some such method as that indicated by Mr. Johnston. The story generally accepted is that Purple, who then lived at Council Bluffs, took a wagonload of men, nine in all, from that place, and when they thought they had come to Burt county, the boundary of which had been designated by Acting Governor Cuming, but, in fact, were in Washington county, they stopped and voted, that being the only election held for Burt county. The acting governor had designated two places for voting in Burt county, one of them at Tekamah, which a company comprising Mr. Purple had staked out on October 7. For the usual version of this election tale, see Nebraska State Historical Society, *Proceedings and Collections*, second series, II, 126; Watkins, *History of Nebraska*, I, 187.—Ed.

the governor said: "General, the turkey is excellent; where did it come from?" The general replied: "It was killed on the town site by one of my constituents and presented to me." The truth was the turkey was killed in Iowa and sent to him by a friend.

There was a member of the House whose seat was near a west window which gave him a good view of what was going on in the town. A new saloon was opened nearly every day, and the custom was to treat at the opening. When this member from his post of observation saw the proprietor of the saloon come out and hang up his signal that he was ready for business, this signal being usually a red flannel shirt, there being no signs or sign painters in Omaha, he would say, "Mr. Speaker, I move we adjourn for a recess"; and of course the motion was seconded, and then most of the members would hasten to enjoy the hospitality of the new saloon. In a few minutes all resumed their seats and were ready for business. While a great many amusing things happened during the session, it passed a wise code of laws and laid the foundation of the future prosperity of a great state.

Occasionally the legislative halls were brightened by women from Council Bluffs and from the nearby Presbyterian mission of Bellevue. Mrs. Cuming, wife of the governor, was a beautiful and charming woman, and I can recall, even at this distance of time, delightful evenings spent with a few choice friends in her parlor at the hotel. A distance of over half a century has effaced from my memory many other incidents of those early days.⁹

⁹ Mr. Johnston sent these reminiscences from Otego, Kansas, January 23, 1908. He died at Kansas City, Missouri, on February 9, 1909.—Ed.

CONTESTED ELECTIONS OF DELEGATES TO CONGRESS FROM NEBRASKA

BY ALBERT WATKINS

NOTE.—On account of their unusual length and importance the foot-notes are printed in type larger than that ordinarily used and at the end of the main part of the paper.

The territory of Nebraska was represented in the federal Congress by five successive delegates chosen at seven elections. Samuel G. Daily was elected for three successive terms; each of the other four delegates was elected but once. Four of the seven elections—the second, third, fourth, and fifth—were contested. Probably it did not seem worth while to contest the first election inasmuch as scarcely four months of the term remained; as a Democratic governor had the authority to declare which of the candidates was elected; as the three leading candidates were all Democrats; as the House of Representatives, which would decide the contest, was strongly Democratic so that neither of the candidates might expect partisan advantage; and as the candidate who on the face of the returns had the most votes had interests in Nebraska City which brought him the backing of the powerful Democrats of the metropolis of the territory.¹ In the meantime the fierce controversy over the location of the capital had established as fierce a feud between the North Platte and South Platte sections of the territory. The territorial canvassers of the second territorial election were all partisans of the North Platte, and they manipulated the returns in such a manner as to exasperate the friends of Hiram P. Bennet, the South Platte candidate for the office of delegate. The composition of the House of Representatives of the thirty-fourth Congress was such as to encourage Bennet to appeal to it. He had been a Whig and was now classed

as "anti-Nebraska", which meant near-Republican. One hundred and eight members of the House were temporarily tagged with that name, seventy-five were Democrats, forty Know Nothings, and eleven were floaters. Nathaniel P. Banks was the candidate of the Republicans for the office of speaker, and William A. Richardson, who had been the Douglas leader in the House in the struggle over the Kansas-Nebraska bill and was governor of Nebraska in 1858, was the principal Democratic candidate. After one hundred and twenty-nine ballots had been taken the Democrats seemed so near success that they courted the adoption of a rule that the candidate receiving a plurality of votes after three more ballots should be declared elected. But on the one hundred and thirty-third ballot the Know Nothings threw enough votes to Banks to elect him—a hundred and three to a hundred for Aiken, Democrat. Alexander H. Stephens, who became famous in the controversy over secession, espoused the cause of Bird B. Chapman, the North Platte and Democratic candidate, with influence enough to permanently seat him. The two leading candidates for a seat in the thirty-fifth Congress were both Democrats, and as the House was Democratic by a clear majority, the contest was between sections. Chapman unsuccessfully contested the election of Fenner Ferguson who was the South Platte favorite. In the thirty-sixth Congress there was a plurality of Republicans which made a contest by Samuel G. Daily against Experience Estabrook easy, and with a large Republican majority in the House of the thirty-seventh Congress, Daily's contest against J. Sterling Morton was never doubtful. That was the last contest, because thenceforth, though Republican ascendancy was not quite safe in the territory, it had become safe at Washington. In 1862 Daily's majority over John F. Kinney, the Democratic candidate, as counted, was one hundred and thirty-six, and Phineas W. Hitchcock's majority over Dr. George L. Miller was 1,087. Territorial government was lost in that of the state three days before

the expiration of Hitchcock's term. Conditions were so unsettled that there were irregularities and frauds, more or less gross, at every territorial election, though there was improvement toward the end.²

Napoleon Bonaparte Giddings, a resident of Savannah, Missouri,³ but an occasional squatter in Nebraska City, with some interest in its town site, was chosen a delegate to Congress at the first election, held December 12, 1854—eight days after the opening of the second session of the thirty-third Congress—and was sworn in on the fifth of January, 1855.⁴ Bird B. Chapman, a resident of Elyria, Ohio, though a political squatter in Nebraska,⁵ was elected a delegate at the election held November 6, 1855, in accordance with the law governing elections, passed by the first territorial assembly, March 16, 1855. Though Chapman's election occurred eight months after the commencement of the thirty-fourth Congress,⁶ it was in time for him to take his seat at the opening of its first session, December 3, 1855.⁷ The second territorial assembly undertook to keep carpetbaggers out of this office by enacting that "No person shall be elected a delegate to [the] Congress of the United States from this territory who shall not have resided therein at least twelve months before the time of voting."⁸ The organic law only required that a delegate should be a citizen of the United States, so that this attempted restriction probably had only a moral effect. It was passed too late to apply to Chapman's first term, but it may have had something to do with his defeat at the next election. An act of the second territorial assembly, passed January 26, 1856, changed the time for holding general elections to the first Monday in August. Accordingly, Fenner Ferguson was elected a delegate to Congress on the third of August, 1857, five months after the commencement of the thirty-fifth Congress.

On the face of the returns of the election of 1859⁹ Experience Estabrook, who had been the first territorial attorney and was a resident of Wisconsin at the time of his

appointment, received a certificate of election from the canvassing board and answered to the roll call at the opening of the first session of the thirty-sixth Congress on the fifth of December, 1859. Samuel G. Daily's contesting memorial was filed February 16, 1860, and the resolutions to unseat Estabrook and to seat Daily in his place were passed May 18, 1860; so that Estabrook served two months and a half more than the moiety of the term. An act of the sixth territorial assembly, passed January 13, 1860, under which Daily was chosen for a third term, provided "that the annual election for delegate to Congress from Nebraska shall be held at the annual election for 1860 and every two years thereafter; that the term of office of said delegate shall commence on the fourth of March next after his election." Thenceforth the delegate from Nebraska was elected in time to be in at the commencement of his term. The act of Congress of March 3, 1817, which provided that "such delegate shall be elected every second year for the same term of two years for which members of the House of Representatives are elected", probably served the purpose for which the provision that "the term of office of said delegate shall commence on the fourth of March next after his election" was intended.

The following excerpts from the official record of the Daily-Estabrook contest afford very useful and interesting information about the population of the frontier counties of the territory and the manner of conducting elections in them at a time soon after the territorial government was organized:



NEBRASKA

COUNTY MAP OF 1850

With names and locations
of historic places 1820-1873
Made to accompany Volume
XIX Nebraska State Histor-
ical Society Publications

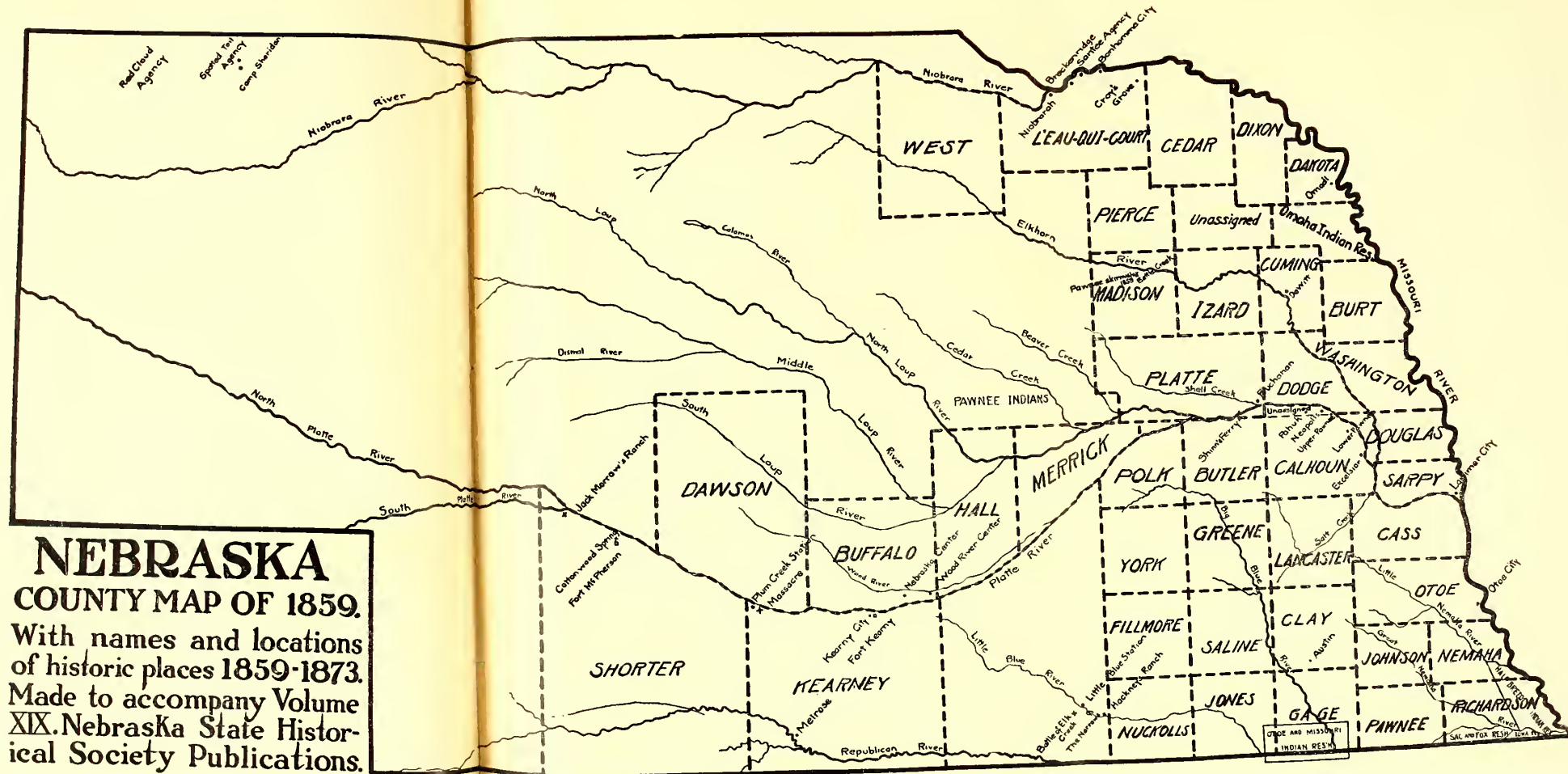
appointment, received a certificate of election from the canvassing board and answered to the roll call at the opening of the first session of the thirty-sixth Congress on the fifth of December, 1859. Samuel G. Daily's contesting memorial was filed February 16, 1860, and the resolutions to unseat Estabrook and to seat Daily in his place were passed May 18, 1860; so that Estabrook served two months and a half more than the moiety of the term. An act of the sixth territorial assembly, passed January 13, 1860, under which Daily was chosen for a third term, provided "that the annual election for delegate to Congress from Nebraska shall be held at the annual election for 1860 and every two years thereafter; that the term of office of said delegate shall commence on the fourth of March next after his election." Thenceforth the delegate from Nebraska was elected in time to be in at the commencement of his term. The act of Congress of March 3, 1817, which provided that "such delegate shall be elected every second year for the same term of two years for which members of the House of Representatives are elected", probably served the purpose for which the provision that "the term of office of said delegate shall commence on the fourth of March next after his election" was intended.

The following excerpts from the official record of the Daily-Estabrook contest afford very useful and interesting information about the population of the frontier counties of the territory and the manner of conducting elections in them at a time soon after the territorial government was organized:

NEBRASKA

COUNTY MAP OF 1859.

With names and locations
of historic places 1859-1873.
Made to accompany Volume
XIX. Nebraska State Historical
Society Publications.





36th Congress, }
1st Session. }

HOUSE OF REPRESENTATIVES.

{ Mis. Doc.
No. 12.

NEBRASKA CONTESTED ELECTION

MEMORIAL

OF

SAMUEL G. DAILY,

Contesting

The Election of Experience Estabrook, of Nebraska
Territory.

February 16, 1860.—Referred to the Committee of Elections. February 23, 1860.—Ordered to be printed.

*To the House of Representatives of the Congress of the
United States:*

The undersigned, Samuel G. Daily, respectfully represents: That at the election for delegate to the thirty-sixth Congress of the United States, held in the Territory of Nebraska on the 11th day of October, 1859, Experience Estabrook and himself were candidates in said Territory; that upon an abstract of returns filed with the governor of said Territory, the said experience Estabrook has received a certificate of election, and now holds a seat in your body by virtue thereof.

The undersigned further represents that the returns of said election were not correct, and that he, and not the said Experience Estabrook, received, in fact, a larger number of the votes legally cast in said Territory at that election than the said Experience Estabrook, and is, therefore, entitled to the seat now occupied by said Experience Estabrook as the delegate of the Territory of Nebraska, in the thirty-sixth Congress.

He also states that, in pursuance of the requirements of the act of February 19, 1851, regulating contested elections, he served duly a notice of contest upon the said Experience

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Estabrook, setting forth specifically the grounds thereof; that answers were received and testimony taken under the provisions of said act; which notices, answers, and testimony, with documents relating to the contest, have been duly transmitted to the Clerk of the House of Representatives, and are now in his possession.

Wherefore, referring to the notice and all other papers as a part of this memorial, the undersigned asks that the subject may be inquired into by the House according to the Constitution and the laws, and the usual course of proceedings on the part of the House in like cases, and that he may be declared entitled and be admitted to a seat in the House as the delegate duly elected from the Territory of Nebraska to the thirty-sixth Congress.

SAMUEL G. DAILY.

Washington City, February 16, 1860.

SIR: You are hereby notified that I shall, on the 16th day of February, 1860, between the hours of 9 a. m. and 5 p. m., take the deposition of Charles H. Comly before Daniel W. Iddings, mayor of the city of Dayton, State of Ohio, at his office in said city; said deposition to be used in the matter of my right to the seat you now occupy as delegate from Nebraska to the thirty-sixth Congress.

SAMUEL G. DAILY.

Hon. Experience Estabrook.

I hereby acknowledge service of the above notice. February 6, 1860.

Byron G. Daniels, of the city of Washington, District of Columbia, being duly sworn, on oath says, that at the request of Samuel G. Daily he served notice on the Hon. Experience Estabrook, within named, on the 6th day of February, 1860, at the said city of Washington, and that the within is an exact and true copy of said notice.

BYRON G. DANIELS. [L. S.]

Subscribed in my presence and sworn to before me this 7th day of February, 1860.

JNO. T. JOHNSON, J. P. [L. S.]

SIR: You are hereby notified that I shall, on the 16th

day of February, 1860, between the hours of 9 o'clock a. m. and 5 p. m., take the deposition of Charles H. Comly before Daniel W. Iddings, mayor of the city of Dayton, State of Ohio, at his office in said city; said deposition to be used in the matter of my right to the seat you now occupy as delegate from Nebraska to the thirty-sixth Congress.

SAMUEL G. DAILY.

Hon. Experience Estabrook.

SIR: A notice, of which the above is a copy, was left at my room in this city on the evening of the 6th of February at about 7½ o'clock p. m. by a gentleman calling himself Daniels. This notice is defective in many particulars, among which I will point out specifically the following, to wit:

1. It is not served "at least ten days before the day on which the testimony is to be taken."

2. The officer before whom the testimony is to be taken does not reside in the district w[h]ere the contested election was held.

3. The place of residence of the witness is not stated in the notice.

I shall therefore disregard the notice altogether.

If testimony is taken by virtue of the notice, will you be pleased to annex to it this my protest.

I have the honor to be, sir, very respectfully, your obedient servant.

E. ESTABROOK.

Daniel W. Iddings, Esq.,

Mayor of Dayton, Ohio.

Evidence in the Nebraska Contested Election Case.

Deposition of Charles H. Comly, taken in pursuance of the notice hereto affixed, to be used on behalf of the contestant in the matter of contest pending in the thirty-sixth Congress between Experience Estabrook, sitting delegate from the Territory of Nebraska, and Samuel G. Daily, contestant.

Charles H. Comly, of lawful age, being first duly sworn, deposes and says:

Interrogatory 1. What is your name, age, and place of residence?

Answer. Charles H. Comly; am twenty-three years old, and reside, at present, in Dayton, Ohio.

Interrogatory 2. State if you were at Fort Kearny, Nebraska Territory, on the 11th day of October, 1859, and, if so, was there an election being held there at that time for delegate to Congress; and, if so, who were the candidates being voted for; how was the election conducted; who were the judges and clerks of election; was there any fraudulent voting; and, if so, by whom and for whom, and how many; and state all the particulars concerning the voting and management of the polls on said day at that place.

Answer. I arrived at Fort Kearny, on my return from Pike's Peak to the States, on the 10th day of October, 1859, and remained there until the morning of the 12th. There was an election held there for delegate to Congress (Experience Estabrook and Samuel G. Daily being the candidates) on the 11th of October, at which I was present. I remained near the polls all day. I saw early in the morning that frauds were being committed, hence I watched the proceedings much closer than I otherwise would. The first fraud that attracted my attention was a soldier from the fort voting. After that I noticed, I presume, (I cannot be certain as to the number,) eight or ten different soldiers, or men clad in the United States military uniform, who said they were soldiers, vote in regular form. After that I saw two of the same men vote again, and one of the two voted once afterwards. Each time they changed their attire, but were poorly disguised. I further noticed quite a number of emigrants, who were coming from and going to Pike's Peak, vote; among them were James Low, Stephen L. Inslee, and William Harlan, all of whom voted for Experience Estabrook, and they were all illegal voters; they were returning in company with me from Pike's Peak. I also saw a number of others vote for Experience Estabrook whom I know had left Denver City, Kansas Territory, but a short time before I did. Every emigrant that was passing or stopping there that day was urged to vote, and the most of them did so. The regular order of voting was first to visit the trading-post known as "Jack's Ranche," take a drink of liquor and a ticket, then go across the road and vote; this programme was filled by nearly every one I saw vote. During the day, at intervals, I saw Dr. Henry, Jack¹⁰ (the proprietor of the ranche) and one of the clerks in the store engaged in making out lists of names. After

writing awhile one of them would put the list in his pocket and go over to the polls and go inside, and from conversations that I subsequently heard between the parties, I am well satisfied in my own mind that the said lists were copied into the pollbooks and returned as voters. The returns, if I remember rightly, gave 288 votes, all for Experience Estabrook. To the best of my knowledge and belief I do not think there were over sixty different persons at or around the polls during the day. About 6 o'clock p. m. the polls were declared closed, and the ballot-boxes were deposited at "Jack's" store. A short time after the polls were closed two men came in from Plum creek, I believe, and desired to vote; the ballot-boxes were again taken to the polls and the ballots were received

I am satisfied in my own mind that one of the clerks was under twenty-one years of age, and that another one of the clerks (or probably one of the judges) was an unnaturalized foreigner. This I learned through conversation with parties acquainted with them. The judges and clerks of the election were, in my opinion, all of them more or less under the influence of liquor, and one or two of them were drunk and unfit for any kind of business. As an evidence of this, one of them (I think by the name of Burkh) signed his own name to one of the poll-books or returns, and his wife's name to the other. The error was corrected before me the next day, the said Burkh declaring that, "by God he wanted people to know that his wife had a finger in that election!" Of the men around the polls during the day I do not think that more than one-half of them were residents of the county or precinct, the balance being emigrants.

CHARLES H. COMLY.

OMAHA CITY,

NEBRASKA TERRITORY, November 12th, 1859.

SIR: Having been informed that you have received from the governor of this Territory a certificate of your election as delegate to the thirty-sixth Congress, I hereby give you notice that I intend to contest your election as such delegate before the House of Representatives of the United States, upon the following grounds:

1. That an abstract of votes, to the number of two hun-

dred and ninety-two, purporting to have been given for you in the county of Buffalo, was transmitted to the governor and unlawfully counted in your favor, although it was well known to the board of canvassers that the said county had never been organized as a county, and consequently that no votes could have been lawfully polled therein; that of these pretended votes, fifty-four, or thereabouts, in number, were counted as having been polled at two pretended precincts, under the names of Nebraska Center and Centralia precincts, in the county of Buffalo, and the residue at a place called Kearny city, without the bounds of the said county, and not included within the bounds of any county; that at the aforesaid two precincts many persons, well known not to possess the requisite qualifications to entitle them to vote anywhere in the Territory, were permitted to vote; that at Nebraska Center aforesaid, one of the pretended judges of election was a citizen and resident of the State of Wisconsin, and one of the clerks a minor; that a majority of the voters were non-residents, and known to be such by the judges of election; that in one instance the judges waited on a non-resident confined by sickness, who had been in the Territory only about four days, and received his vote; that in Kearney city precinct there are not twenty-five persons having the qualifications of electors, or who in fact appeared as voters at the polls held therein, most of the votes, numbering two hundred and thirty-eight, pretended to have been there taken, having been fraudulently stuffed into the ballot box, and the rest having been deposited by soldiers and other persons attached to the army of the United States stationed at Fort Kearny, some of whom voted several times, and by transient persons known to the judges to be such; that the judges and clerks, while acting as such, were grossly intoxicated; that an hour after the polls had been closed it was again opened and other votes received; that other persons were permitted to have access to the ballot-box after the poll was finally closed, and to add to the poll lists fictitious names, which was done to the number of more than two hundred.

2. That votes to the number of ten, purporting to have been taken in Saline county, and twenty-eight votes purporting to have been cast in the county of Calhoun, and twenty-one votes purporting to have been given in the county of Izard, were transmitted to the governor and un-

lawfully counted in your favor, although it was well known to the canvassers that neither of the said counties had ever been organized as such, and consequently that no lawful election could have been held therein.

3. That in fact there was no election held in either of the said counties of Saline, Calhoun, and Izard, and the returns purporting to come from the clerks of said counties are wholly fraudulent; that all that portion of the Territory erected into said counties is entirely uninhabited by white men, and these facts also were well known to the canvassers.

4. That although no more than thirty votes, or thereabouts, were given in the county of L'Eau Qui Court by persons entitled to vote therein, no less than one hundred and twenty-eight votes were thence fraudulently returned and counted for you in the final canvass.

5. That the precinct of Genoa, in the county of Monroe, is within the limits of an Indian reservation, wherein no poll can be lawfully held, and no resident within which could have been entitled to vote, and although this was well known to the canvassers, seventeen votes for you there taken were unlawfully counted in the final canvass.

6. That the votes polled at Salt Creek precinct, in the county of Cass, seventeen in number, fourteen of which were for me and three for you, were wrongfully rejected, under the pretence of some irregularity in the returns of the judges by the board of county canvassers, and hence were not included in the abstract of votes sent to the governor; and that at Rockport precinct, in Washington county, votes, consisting of six for you and ten for me, were wrongfully rejected by the board of county canvassers under the pretence that the judges were not lawfully sworn.

7. That in Otoe county votes to the number of between fifty and one hundred were fraudulently given by persons residing out of the Territory of Nebraska.

8. That at Brownville precinct, in the county of Nebraska, gross frauds were committed in the reception of illegal votes and in making the returns to the clerk of the county, of the precise nature of which I am not yet informed.

9. That in the county of Richardson, persons known as half-breeds, and not possessing the qualifications of electors, to the number of fifteen or more, were unlawfully per-

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mitted to vote and did vote for you, and that in the precincts of St. Stephen, Rulo, and Salem, or in one or more of them, persons, to the number of twenty-five or more, residing within the limits of the half-breed reservation,¹¹ and therefore not entitled to vote, were nevertheless unlawfully permitted to vote and did vote for you.

10. That there was no lawful concurrence on the part of the district attorney of the Territory in the decision that you were entitled to a certificate of election.

11. That at the late election in this Territory I received a greater number of legal votes than you did, and the highest number cast for any one person.

Yours, respectfully, SAMUEL G. DAILY.
Experience Estabrook, Esq.

OMAHA, N. T., December 12, 1859.

SIR: Your communication of date November 4, 1859, and one of date November 8, 1859, purporting to be a notice to contest my seat as a delegate from Nebraska in the thirty-sixth Congress, were duly received by me on the day on which they respectively bear date.

In answer to said notices I deny each and every allegation therein contained, and assign two reasons why I am entitled to and shall insist upon my right to said seat:

I. I hold a certificate of election in the following words, viz:

"EXECUTIVE CHAMBER,

"NEBRASKA TERRITORY.

"Samuel W. Black, Governor of said Territory, to all whom these presents may come, greeting:

"Experience Estabrook, having received the largest number of votes cast at the general election held in this Territory on the eleventh day of October, A. D. 1859, for delegate to Congress, is hereby declared duly elected delegate from Nebraska Territory to the thirty-sixth Congress of the United States. This shall be and is the certificate of his said election as delegate to the Congress aforesaid.

"In testimony whereof I have hereto set my hand, and caused to be affixed the great seal of the Territory of Nebraska. Done at Omaha the 3d of November, A. D. 1859.

[L. S.]

"SAMUEL W. BLACK,
"Governor of Nebraska Territory."

II. At the election aforesaid for delegate to Congress, I received the greatest number of legal votes cast at said election for delegate, and I am the legally elected delegate to said Congress from the Territory of Nebraska; and, as such, I am entitled to my seat in the Congress for which I was elected.

Certain other papers have been found in my house, one dated the 4th day of November, A. D. 1859; one dated the 12th day of November, A. D. 1859; and one dated the 14th day of November, A. D. 1859, which were found many days subsequent to the service of the two notices first above referred to, purporting to be notices of contest with additional reasons assigned, together with a stray paper, purporting to come from you, to the effect that you withdrew the first two notices served upon me, and substituting the three last named in lieu of the former. I hereby deny your right to withdraw said first notices, and protest against your right to substitute and serve additional notices assigning new and different grounds from those contained in the notices first served.

I also deny that the additional papers found at my house as aforesaid are legal notices to me at all, or that service can be made in that manner under the act of Congress of 1851; and I answer the same under protest, reserving my right to take advantage of such illegal notices and service before the officers taking depositions and the House of Representatives, and shall claim and insist before the officers taking depositions, that no testimony can be received in support of the causes therein assigned; and, if overruled in this, and testimony is taken in support of the same, that the same cannot be read in evidence before the Committee on Elections nor the House of Representatives.

16th. That in the county of Cedar the entire votes of one precinct were not counted by the county clerk, in which I had a legal majority of nine votes.

17th. That in Washington county, where you received a majority of — votes, non-residents and foreigners were allowed to vote for you, and such votes were counted by the board of canvassers.

18th. That in Dodge county ten fraudulent votes were cast for you, and improperly counted for you in the final canvass.

19th. That in Hall county some twenty-five legal votes cast for me were rejected by the county canvassers, and over thirty votes cast for you in said county, at a precinct comprised wholly within the military reserve in said county, by residents on said reserve, were improperly counted.

20th. That one hundred and fourteen illegal votes were given for you in Nemaha county, and improperly counted by the board of canvassers.

21st. That gross frauds were committed in Nemaha, Richardson, and Pawnee counties by the judges of election, by allowing non-residents, foreigners, and persons who were not legal electors, the privilege of voting for you.

22d. That elections were held in precincts wholly unorganized, and pretended judges and clerks officiated at said elections without first being qualified according to law, in the counties of Cass, Otoe, Nemaha, Richardson, Pawnee, and the pretended counties of Gage, Clay, and Lancaster.

23d. That elections were improperly held and votes given and counted for you in the wholly unorganized counties of Gage, Clay, and Lancaster.¹²

24th. That in Grand Island precinct, in Hall county, where a large majority of votes were received and counted for you, the said precinct was not legally organized, neither were the judges and clerks of election legally appointed and qualified.

25th. That in the precincts of Syracuse, Hendrick, McWilliams, and Otoe, in Otoe county, where a large majority of the votes were received and counted for you, the election board[s] of said precincts were not organized according to law; neither were the judges and clerks of said election precincts sworn by any person authorized to administer oaths.

26th. That in the precinct of Omaha nine persons residing in Illinois, but temporarily in Omaha, voted for you, when in fact they were not legal electors in Nebraska.

EXPERIENCE ESTABROOK.

THE TERRITORY OF NEBRASKA, *County of Douglas*, ss:

Be it remembered, that in pursuance of the notices hereunto annexed, before me, George Armstrong, judge of

probate in and for the county of Douglas, in the Territory of Nebraska, on the 16th day of December, A. D. eighteen hundred and fifty-nine, and on the several days following hereinafter specified, at my office, in the city of Omaha, in the county aforesaid, Robert Kittle, John M. Thayer, Eliphus H. Rogers, James B. Coit, William H. James, John Taffee, John McConihe, Albert G. Clark, Stephen H. Wattles, Samuel W. Black, William Cook, Magnus Wallenberg, William Thomas Clark, James L. Hindman, and John D. Neligh, were produced as witnesses, and having been by me severally duly sworn to answer truly all such questions as should be proposed to them touching the matter of the contested election of Experience Estabrook, as delegate from the Territory of Nebraska to the 36th Congress, Samuel G. Daily, contestant, then and there severally testified as follows:

In the matter of the contested election of Experience Estabrook, as delegate to the 36th Congress from the Territory of Nebraska: Samuel G. Daily, contestant.

Testimony taken on the part of the said Samuel G. Daily, in pursuance of the notices hereunto annexed, at the city of Omaha, in the said Territory.

Present: Mr. Conkling¹³ and Messrs. Pease & Paddock, attorneys for Mr. Daily; Mr. Kinney, Messrs. Richardson & Kennedy, and Mr. Redick, attorneys for Mr. Estabrook.

December 16, 1859.

Robert Kittle, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. About 37 years of age; occupation, farmer; place of residence, Fremont, Dodge county, Nebraska Territory.

2d question. How long have you resided in this Territory?

Answer. About three years and four months.

3d question. Where were you on the 11th day of October last, the day of the last general election in this Territory?

Answer. I went through Monroe county to the Indian reservation. In the latter part of the day I was at Genoa, on the reservation of the Pawnee Indians.

4th question. State whether an election was held at Genoa on that day, and whether you were present at the polls at any time during the day?

Answer. There was an election held there, and I was at the polls in the latter part of the day.

5th question. State whether you were present at the time the votes were canvassed?

Answer. I was.

6th question. State what number of votes were polled at that election, and for whom they were given as delegate to Congress?

Answer. There were 23 votes polled for delegate to Congress, three for Mr. Daily, and 20 for Experience Estabrook.

7th question. State, if you know, in what part of the Territory Izard county is located; how far is it from the Missouri river, and from the town of Fremont, where you reside?

Answer. From the maps which I have consulted, it lies about forty miles west of the Missouri river, and about thirty miles northwest of Fremont, where I reside, to the nearest point of Izard county, being the southeast corner of said county.¹⁴

8th question. What knowledge have you, not derived from the maps, of the situation and condition of the county of Izard?

Answer. I have been through that county along the Elkhorn river where it passes through the county. I know of no settlement in the county. It appeared to me to be entirely uninhabited. It appeared to be a prairie county as far as I could see, except along the Elk Horn river there was some timber. I saw no road whatever excepting the trail of the Indians.

9th question. State whether it is not a matter of public notoriety, in your section of country, that Izard county is wholly an uninhabited county?

Answer. So far as my knowledge extends regarding that subject, it is so; and I never saw a settler of Izard county going to or returning from that county, or heard of

one, and Fremont would be a natural road for them to come and go.

10th question. State, if you know, what are the farthest settlements west of the Missouri, in the direction of Izard county?

Answer. The farthest, of which I am acquainted, is West Point, in Cuming county, the middle of the southern portion of said county.

11th question. State, if you know, what county lies directly east and adjoining Izard county?

Answer. Cuming county.

12th question. State how far, and in what direction, Calhoun county is from the town of Fremont?

Answer. Nearly south, across the Platte river, nearest point about two and a half miles.

13th question. State whether you have any knowledge in regard to the settlement of Calhoun county?

Answer. I have been in Calhoun county, up and down the river some eight or ten miles; there was a settlement there about two years ago of some ten or fifteen persons, close by the river, near a point which was then called Neapolis,¹⁵ about four or five miles northwest from the Pawnee village. I have been there several times since, and the houses or shanties which they had built were entirely torn down, and the people had left more than a year ago. I do not know of any other settlements now, or that have been made within a year in that county.

14th question. State whether the Pawnee Indian village was within the limits of Calhoun county, and at what time the Pawnee Indians were removed by government from that locality?

Answer. They had two villages, both in Calhoun county, about six miles apart; one about four miles south of Fremont, on the south bank of the Platte river; one about ten miles south of Fremont, on the southwesterly bank of the Platte river. They were removed from their villages the latter part of October last, and taken to their reservation and settled there by Judge Gillis, their agent, about the 1st of November.

15th question. What knowledge have you, if any, in relation to the election, or the returns of the election, in Calhoun county?

Answer. I called on the clerk of Platte county for the

purpose of seeing those returns. He showed me the returns which purported to come from Calhoun county. I inquired of him where the precinct of Calhoun was where the election was purported to have been held by the return, and remarked, at the same time, that I supposed that it was the duty of Platte county to organize the precincts of Calhoun county. He said that the record did not show that they had made any precincts in that county, and that he received the returns in a letter from Mr. McConihe, the governor's private secretary.¹⁶

Cross-examination.

1st question. How long have you resided in Dodge county?

Answer. About three years and three or four months.

23d question. What is the probable population of Platte county?

Answer. About two hundred.¹⁷

24th question. What is the probable population of Cuming county?

Answer. I know less about that, but it may be about thirty or forty.¹⁸

25th question. Do you undertake to say that you have made a personal examination in Izard county with the view of ascertaining how many people there were in the county, if any?

Answer. I have been through the county and conversed with those passing through with me, none of whom appeared to know anything of any inhabitants in the county.

26th question. How many times have you been through Izard county?

Answer. Once.

27th question. When was that, and who was with you?

Answer. I think it was about the 10th of July, with the expedition against the Pawnees.¹⁹

28th question. What part of the county did you pass through in that expedition?

Answer. I think near the centre; we followed the course of the Elkhorn river, which started in the county about ten miles north of the southerly boundary through

the east line, and went out, I think, north of the middle of the west line.²⁰

29th question. You do not pretend to say that there is no settlement west of West Point, in Cuming county, Nebraska Territory, only that you know of no other.

Answer. I know of settlements in the Territory farther west, but not in Izard county, or that range of counties.

30th question. Can you state of your own personal knowledge that on the 11th day of October last, there were not inhabitants and voters in Izard county?

Answer. I could not state that of Izard nor any other part of the unsettled portion of the Territory.

December 17, 1859.

John M. Thayer, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Thirty-nine years—farmer—Omaha, Nebraska.

2d question. Have you had the means of becoming acquainted with Izard county, and, if so, what means?

Answer. I have from maps, and also from having passed through the county.

3d question. When did you last visit the county?

Answer. Between the 6th and 12th of July last.

4th question. Did you discover any evidence of its being inhabited?

Answer. I did not.

5th question. State, if you please, what appeared to be the condition of the county, and whether you observed any evidence of its being inhabited or otherwise?

Answer. It was a prairie country. I saw no sign of habitation through the whole extent of it.

6th question. Through what portion of the county did you pass?

Answer. We struck the county, as near as I can judge, near the southeastern portion of it, and then proceeded in a northwesterly direction nearly through its centre.

7th question. Did you see any travelled roads, and what was their character?

Answer. I did not see any. I was in command of an expedition in pursuit of the Pawnee Indians, and we followed the trail of the Indians directly through the county.

8th question. Did you see any person who seemed to be a resident of the county while passing through it?

Answer. I did not. I met with no person whatever.

9th question. How long have you resided in this Territory, and have you been accustomed to observe the progress of the settlements of the Territory?

(Objected to by counsel for Mr. Estabrook, on the ground of irrelevancy.)

Answer. Five years last October. I have been on the frontier more or less every year. The first settlements were on the Missouri river; then extended to the Elkhorn river, and up the Elkhorn as far as Fontanelle for the first three years. Fontanelle is about forty miles from Omaha.²¹ The next settlements north of Fontanelle are De Witt²² and West Point; they are in Cuming county, and about twenty or thirty miles north of Fontanelle. These are the farthest settlements in that direction. West Point is about ten or fifteen miles from the eastern boundary of Izard county. West of West Point and De Witt there were no settlements.

10th question. State whether it is or not a fact of public notoriety among the old inhabitants of this part of the Territory that Izard county is wholly an uninhabited county.

(Objected to by counsel for Mr. Estabrook . . .)

Answer. It is especially among the inhabitants of Fontanelle, West Point, and De Witt. I made extensive inquiries of them when I was on the expedition above referred to, with the view to the protection of the settlements, and also to ascertain whether further depredations had been committed by the Indians.

Cross-examination [by John F. Kinney].

1st question. How long have you been engaged in farming?

Answer. Some four years.

2d question. Where have you been engaged in farming?

Answer. Douglas county.

3d question. Are you a practical operative farmer?

Answer. Yes.

4th question. Have you not been engaged a portion of the time in practicing law with George Richardson, in the city of Omaha?

Answer. I was for a while.

5th question. Is not your profession more that of a politician than a farmer?

Answer. No; and I never was constable of Wyoming,²³ either, as the counsel for the sitting member has been.

6th question. Were you not engaged during the last autumn in canvassing this Territory for Mr. Daily?

Answer. I was.

7th question. Is that a part of the occupation of a farmer?

Answer. The gentleman can answer that question for himself.

8th question. How many speeches did you make in the last campaign for Mr. Daily, according to the best of your recollection?

Answer. I do not recollect; I made a number.

9th question. You state in your answer to the first question that you are a farmer and reside in Omaha city; are you engaged in practical farming in Omaha city?

Answer. No.

Direct examination resumed.

1st question. In your march through Cuming county, did you pass through the settlement you named West Point?

Answer. I did not pass through, but to the left of it.

2d question. State whether you are quite sure that West Point is in Cuming county, and a considerable number of miles from the eastern boundary of Izard county?

Answer. I am.

3d question. Have you been attentive to the course of legislation in this Territory?

Answer. I have.

4th question. Has it or not been the practice to designate counties by metes and bounds in the parts of the Territory known to be inhabited?

(Objected to by the counsel for Mr. Estabrook, on the ground that you cannot prove legislative acts by parole evidence.)

Answer. It has been the practice.

5th question. Have there been many such instances?

(Objected to by counsel for Mr. Estabrook, for the reason above given.)

Answer. There have been, I think, of every session of the legislature. I recollect one session there were seven or eight counties thus laid off uninhabited.²⁴

6th question. You spoke of having commanded the expedition against the Pawnees. What military commission do you hold in the Territory?

Answer. That of major general.

7th question. Is there any direct line of travel westward from the Missouri river through Izard county?

Answer. There is not.

Eliphus H. Rogers, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Thirty years; lawyer and farmer; residence, Fremont, Dodge county, Nebraska.

2d question. How recently have you been in Columbus, Platte county, and what was the object of your errand there?

Answer. I was in Columbus about the 20th of November last. My errand there was to procure a copy of the return of the vote said to have been cast in Calhoun county at the last general election.

4th question. State whether you have in your possession that part of the record you copied?

Answer. I have the copy I took. It is more a memorandum than a copy of the record.

5th question. Is your memorandum, as far as it goes, in accordance with the record?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. I believe my memorandum, so far as it goes, sets forth the facts contained in the record truly.

6th question. State whether that memorandum shows who were the officers of the election, and at what point the election was held in Calhoun county.

(Objected to by counsel for Mr. Estabrook on the same grounds as to the last preceding question.)

Answer. It does. It states that the election was held at the house of James L. Smith, in Calhoun precinct, Calhoun county; that William P. Glover, Mather F. Brown, and Eldred Scott were judges of said election, and Ralph Hawley and J. Ross were clerks. My recollection is that several of the christian names on my memorandum are contractions of the names on the record.

7th question. How far do you reside from Calhoun county?

Answer. About a mile and a half or two miles from the north line of the county.

8th question. State whether you are acquainted in Calhoun county, and whether or not you have recently been through the county?

Answer. I am not personally acquainted with any persons at present residing in that county. I have seen several persons who did reside there recently; as after I left Columbus, to which I before alluded, I went directly to Calhoun county, passed through the northern and eastern portions of that county.

9th question. For what purpose did you visit Calhoun county, and what was the result of your examination?

Answer. I went there for the purpose of ascertaining how many voters there were in the county, if any, and whether any election was held there on the 11th day of October last. I found two voters in the northwest corner of the county, but they knew of no election having been held there. I also found in the southeast portion of said county a few houses, and in conversation with a gentleman who owned one of them, he stated that he had resided there for some time; that he had never heard of an election being held in Calhoun county; that he knew of no voters in said county except the two to which I have before alluded, and five, including himself who resided in that immediate vicinity.

(Objections by counsel for Mr. Estabrook . . .)

10th question. State whether, from your examination, you were able to find where Calhoun precinct was located,

or to procure any evidence whether any election was held there or at any other point in the county.

Answer. I could not hear of any precinct organizations having ever been made in Calhoun county, or of any election having ever been held there, although I inquired of all persons with whom I came in contact while passing to, through, or from said county.

12th question. You state you made an effort to ascertain the facts inquired of in the last question. Now state the nature and extent of that effort.

Answer. I crossed the Platte river at what is known as Shinn's ferry; proceeded down the old Indian trail towards Calhoun county; found the two voters before alluded to about noon; travelled until night without finding any settlements. At night I came to a place of a former settlement, called Powhoco, and remained there during the night in a deserted house.²⁵ There were several small houses about there without roof, floor, windows, or doors. Soon after daylight next morning I started again, and travelled till about three o'clock before finding any settlers or evidences of settlement, at which time I found the gentleman to whom I before alluded, with whom I spent an hour or two in conversation with reference to the settlement which had been made at Powhoco and abandoned, and with reference to the number of people in Calhoun county, about the last election.

19th question. From your examination in Calhoun county, would you have been likely to find the voters and officers that purported to have acted and voted at the election at the Calhoun precinct if they had resided in that county?

Answer. I think I should.

20th question. Do you then design to be understood that as the result of inquiries you saw three persons and heard from them of four others only residing in the county?

(Objected to by counsel for Mr. Estabrook, as being leading.)

Answer. I perhaps committed an error of speech in saying that I found the two voters in the northwestern part of Calhoun county, for they were both absent from home at the time I was there, but the wife and children of one

and the wife of the other were at their homes, and I saw no other person except the one I have mentioned residing there.²⁶

21st question. State in what part of the Territory Izard county is located.

Answer. I suppose it to be located west of Cuming county, north of Platte, and adjoining those two counties.

Cross-examination

18th question. You stated in your examination in chief that in passing through said county you followed an Indian trail; state now where you first struck the county line?

Answer. Near its northwest corner, near the Platte river.

19th question. Is there any bridge across the Platte river at that point, and which side of the Platte do you live?

Answer. There was no bridge near the point where I first struck the line, and I live on the north side of the Platte river.

20th question. How near that point was there a bridge?

Answer. I know of no bridge across the Platte river.

James B. Coit, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age twenty-three years; lawyer by profession; residence Omaha, Douglas county, Nebraska Territory.

2d question. State whether you have ever been in Niobrara, in L'eau Qui Court²⁷ [county] in this Territory.

Answer. I have.

2d question. State at what time you were there, at whose instance, and for what purpose you were there.

Answer. On Tuesday, the twenty-second of last November; on Wednesday, the twenty-third, and during the early morning of Thursday, the twenty-fourth day of the same month. I was there at the request of Samuel G. Daily, of Nemaha county, Nebraska, the contestant in this case, to

obtain, if possible, a copy of the poll-books of an election held in that precinct on the eleventh day of last October, and to obtain such other information as I could respecting said election.

3d question. Who went there with you?

Answer. I went alone from Omaha city to Dakota city, and was accompanied from there to Niobrarah by William H. James,²⁸ of Dakota city.

4th question. At what place in Niobrarah did you and Mr. James stop after your arrival there?

Answer. I believe we first stopped for a few moments at the tavern.

5th question. To what place did you go on leaving the tavern?

Answer. We went to a small one-story frame building designated there as "the store."

6th question. You will please describe briefly that building, and for what purpose it was occupied, and what induced you to go there.

Answer. The building was a one-story frame building, divided into two rooms by a thin canvas partition. The room we first entered, fronting on the road, was occupied by a Mr. Westermund as an Indian trading store; the back room was used as a cooking and sleeping room, and contained the post office, the probate judge's office, and the county clerk's office. Robert M. Hagaman being the county clerk and the postmaster, and having a letter of introduction to Mr. Hagaman, went there to deliver it and to obtain from him, as the county clerk, a certified copy of the poll books of that precinct election. The two rooms I have just referred to are about the same size, each being about thirteen feet square.

7th question. State what occurred at your first interview with Mr. Hagaman?

Answer. We found Mr. Hagaman there; I returned to the tavern; Mr. James presented the letter of introduction to Mr. Hagaman, and Mr. James and Mr. Hagaman walked to the tavern in consultation upon the object of our visit. This was early in the morning. After conversing a few moments at the tavern Mr. Hagaman, Mr. James, and myself returned to the store, and Mr. Hagaman agreed to furnish us with a copy of the poll-books of the Niobrarah precinct election. We obtained a copy of the poll-books from Mr. Hagaman which he certified to as correct.

8th question. What was your purpose after obtaining the certified copy of the poll-books?

Answer. We wanted to look about the place a little, make some personal inquiries, and return home.

9th question. Why, then, as you before stated, did you and Mr. James remain so long at Niobrarah?

Answer. While looking about the place, as stated in my last answer, while out of sight of our horse and buggy, which was hitched behind the office of one Major Gregory, Indian agent, our horse was removed from our buggy and secreted without our knowledge, and we were unable to find it. Not being able to find our horse that day, we were obliged to remain at the tavern over night. The next morning we resumed the search for our horse, and discovered that two wheels of our buggy had been removed. We spent the day in searching for the wheels and horse, endeavoring to get possession of them that we might return home, but without success. We had thus far been detained two days and one night. On the evening of the second day, at an early hour, several persons came to the tavern, of whom I remember one called Frank West and one called John H. Starr; they (West and Starr) asked Mr. James to see the copy of the poll-books, which they understood we had in our possession, stating, as a reason, that they were informed their names were on the list as having voted at the election, and that as they did not vote they would like to see if it was so. We thereupon produced the list, and they endeavored to snatch the same while I was reading the names, in which they did not succeed. After some boisterous conduct towards us, they left the tavern and went towards the store, threatening before they left that they would have the copy of the poll-lists which we had. Mr. James and myself, immediately after they left, held a consultation as to what we had better do under the circumstances, and it was concluded that one of us had better escape from the place immediately with our copy of the poll-books, while the other should remain at the tavern to look after our horse and buggy wheels which had been secreted. Mr. James accordingly left with the copy of the poll-books, with the design of going to a farm house of Mr. D. B. Dodson, where we had spent the night previous to our going into Niobrarah, and I remained at the tavern.

10th question. State what occurred at Niobrarah after the departure of Mr. James.

Answer. I retired and went to bed very soon after Mr. James had left. I had been in bed over an hour, when I was aroused by noises outside of the tavern by persons demanding entrance into the tavern. They gained admittance, and were soon at my chamber door, calling for me to open the door and let them in, stating, in answer to my inquiry what they wanted, that they desired instant admission, and unless I opened the door they would burst it open. I told them that if they were after my copy of the poll-lists that I had not got it, that I would let them in as soon as I was dressed, which I did. They examined my clothing and the bed-clothing, and they, the sheriff of the county, whose name I do not at present remember, and the Hon. Judge James Tuffts,²⁰ sitting democratic member of the legislature of Nebraska, requested me to go with them, and the other persons who were with them, about a dozen in number, and around, followed after us through the tavern, down stairs and out of doors. A few steps from the tavern the sheriff, who appeared to be spokesman for the gang, desired me to give them up immediately the copy of the poll-lists. I told them I had not got it, and that if I had, as I became legally possessed of it, I would not give it to them. The sheriff stated that they had come after it and would have it, peaceably if they could, forcibly if necessary; that the citizens of Niobrarah were all equally implicated in the fraud that had been committed there, and that the copy of the poll-books which we had they regarded as proof of such fraud, and since they had proceeded so far they might as well go a little further, and prevent the record from leaving that county, and they would do. This declaration was made in the presence and hearing of James Tuffts, and he did not dissent.

(To this part of the answer the counsel for Mr. Estabrook objected on the ground that it is hearsay and irrelevant.)

The gang, appearing satisfied that I had not the poll-lists, started in the direction of Mr. Dodson's, exclaiming "James has them!" "James has them!" About three hours afterward the gang came back to the tavern and to my chamber, and informed me that they had found James and had got the poll-books, and the county was safe.

(To this part of the evidence the counsel for Mr. Estabrook also objected on the same ground as above stated.)

The next morning I found the wheels replaced on my buggy, and was told where to find my horse, and I immediately started for Mr. Dodson's.

11th question. State whether, before leaving for Dodson's, you had another interview with the county clerk relating to the procurement of another copy of the poll-books; and if so, what was the result of that interview?

Answer. I had. He informed me they had been stolen, and he could get no clue to their whereabouts.

(Objected to by counsel for Mr. Estabrook on the ground that it is hearsay and not the best evidence.)

12th question. State whether, in that conversation, you asked or demanded another copy of those poll-books.

Answer. I did, and he replied as before stated.

(Objected to by counsel for Mr. Estabrook, on the ground as above stated.)

13th question. State the number of votes polled in that precinct, as appears by the poll-books of that election, and for whom they appear to have been given as delegate to Congress.

(Objected to by counsel for Mr. Estabrook . . .)

Answer. One hundred and twenty-one votes, all for Experience Estabrook.

14th question. Now state what you saw peculiar, if anything, in the appearance of the names on the poll-books.

(Objected to by counsel for Mr. Estabrook . . .)

Answer. I noticed upon said poll list, in consecutive order, some six or more Smiths, and I think ten names of McRea in consecutive order; also, I remember the names Howell Cobb and Aaron V. Brown;³⁰ also the name of N. Fitzgerald, whom I know to be a resident of Council Bluffs, Iowa; the name of Dodson, whose first name I do not remember, who is a minor, and did not vote; also the name of William Brigham, who was at Sioux city, Iowa, at the time of the election.

15th question. State what kind of a place this Niobrarah appeared to be.

Answer. It appeared to be scarcely more than an Indian trading post. It contained a tavern, two or three vacant frame buildings, one of which was called Major Gregory's store-house, Major Gregory's office, the store which I have described, about four log-houses, one of them called the "dance house," and a building that appeared

to be a broken down mill, and a blacksmith's shop near by. On the bluffs back of the place there was a building, and one just under the bluffs, which I understood were occupied by one West and one Starr. I do not remember anything else.

16th question. State what appeared to be the condition of the country in the neighborhood of Niobrarah.

Answer. Four miles this side of Niobrarah there is a very comfortable farm-house, with out-houses, fencing, and other improvements, occupied by Mr. D. B. Dodson and family, of whom I have before spoken. Between that and the town of Niobrarah I do not remember any other improvements or inhabitants. Between Frankfort, which is the last place this side of Niobrarah on my way up, and Niobrarah, I passed only one dwelling house, occupied by a person named G. Collins. Back of Niobrarah, except in the valley of the Running Water, I saw no country that appeared suitable for agricultural purposes. Up the Running Water valley, about four miles, there was a vacant cabin.

17th question. State about what distance it is from Frankfort to Niobrarah?

Answer. I have no memorandum showing the distance, but it is a good day's ride with a horse and buggy; say about thirty-five miles.

18th question. State in what part of the county Niobrarah is situated?

Answer. The buildings of the town are situated about two miles this side of where the Running Water empties into the Missouri river, and from a quarter to a half a mile from the Missouri river.

19th question. State in what part of the county Frankfort is situated?

Answer. I believe the Missouri runs nearly east and west there. St. Helena, Cedar county, I think, is the last settlement going up the road to Niobrarah before you get to Frankfort [and] Zepeota. I think Frankfort is in the east portion of the county.

Direct Examination Resumed

3d question. Will you briefly describe Frankfort and Zepeota, and their relative situations?

Answer. Frankfort and Zepeota³¹ are situated on opposite sides of a small creek, and opposite to each other. Frankfort contains one frame house and one or two small log houses. Zepeota contains one or two small log houses. These places are on the Missouri river. That is all.

JAS. B. COIT.

TUESDAY MORNING, December 20, 1859.

William H. James, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Twenty-seven years old; occupation, lawyer; residence Dakota city, Nebraska.

2d question. Are you the person referred to by Mr. Coit as having accompanied him to Niobrarah?

Answer. I am.

3d question. State whether you were present during the whole of his examination yesterday, and attentive to all he said in that examination, and, if so, state whether or not you fully concur in all the material statements made by him, relating to what transpired in Niobrarah up to the time he states you left for Mr. Dodson's; and, if not, state in what particulars your recollection differs from his?

Answer. I was present and attentive to what he said. I fully concur in all the material statements made by him, except in that portion which relates to the conversation and transaction at the hotel between Mr. Coit, myself, John H. Starr, and F. M. West.

(This question and answer objected to by counsel for Mr. Estabrook.)

4th question. You will please then make your own statement relative to what occurred while you were at Niobrarah relating to the object of your visit to that place?

Answer. We passed the preceding night at Mr. Dodson's four miles east of Niobrarah. On the morning of the 22d of November, we went into Niobrarah and as soon as we could get in we went to the house that we were informed was occupied by the county clerk. I presented a letter of introduction from Mr. Taffe to the county clerk, and also informed the county clerk as to the object of our visit, and told him that we wished to get a copy of the poll-books. He said—

(The counsel for Mr. Estabrook here objected to the witness detailing any conversation between him and the clerk or any one else . . .)

The witness thereupon proceeded to state—

He said that he wished to discharge his duty as an officer, but doubted whether he had a right to deliver us a copy. I offered to show him the statute requiring that the public records should be open to the inspection of every citizen. He thereupon said that he would deliver us a copy if the fees were paid, which Mr. Coit agreed to do. He then proceeded to make a copy of the list of names of voters purporting to have voted at an election held in the Niobrarah precinct in L'Eau Qui Court county. The paper of which he gave us a copy he took from his trunk. He read the names from the original book and Mr. Coit wrote them down. After which, the clerk compared the copy with the original list, and certified that it was a true copy. After procuring a copy of the poll-list we went up to the tavern and remained a short time, and then started for Major Gregory's office, when we discovered that our horse was gone. We were therefore unable to leave the place and remained until night, when we made an effort to get our horse, but were unable to do so. We then returned to the tavern and stayed until morning, when we discovered that the left fore wheel and the right hind wheel of our buggy were removed. We spent the day in trying to find them and without success; in the evening, while at Westamond's store, John H. Starr and F. M. West asked me if I had a copy of the poll-list, and both remarked that they understood their names appeared upon the list as having voted, and that as they had not voted they wished to see the list, that they might see if it was true. I told them that if they would go up to the tavern I would show them the list. We went to the tavern together, when I commenced reading the list to them. Mr. Coit remarked that he could read it better, it being in his handwriting, and I handed it to him, and he commenced reading the names; soon after he had commenced, F. M. West made an effort to snatch the list, and Mr. Coit handed it back to me, and I put it in my pocket. West then told me that he wanted the list, and told me to give it up, which I refused to do. He then swore that I never should leave the county with that list; at that time

he had hold of me by the collar. West and Starr immediately left the hotel, and at the same time I went out at another door and started for Dodson's, about four miles this side of Niobrarah. It was then about 10 o'clock in the evening. Soon after arriving at Dodson's I went to bed. About half past one or two o'clock I was waked up by Mr. Dodson, who made the remark that those fellows were after me. At the time I awoke I could see a number of men at either of the two windows of my room, who immediately afterwards came in. James Tuffts, who was one of the number who came into the room, said that they had come after a copy of the poll-list. Mr. Dodson advised them to let me alone. Tuffts replied that they "had walked four miles for that poll-list, and, by God, we were going to have it." I told Mr. Dodson that I was his guest, and wished to involve him and his family in no difficulty, but told him that I should like very much to keep the copy of the poll-list, but if he desired it that I would give it up. He said he thought I had better let them have it. I thereupon got off of my coat, which I was sitting upon at the time, and told them they could take it. They took the copy of the poll-list from my coat and immediately burned it up. Either Mr. Tuffts or Mr. Callahan, the sheriff of that county, said that the citizens of the Niobrarah precinct were all implicated in the frauds perpetrated at the last election, and that they were all alike interested in suppressing the evidences of the fraud. They said at the same time that they had no ill-will towards me, and that if I would drop the matter and say no more about it, that any thing that I might ask at the hands of the citizens of Niobrarah would be granted, and that if ever I was again a candidate for office that they would give me as many votes as were necessary to secure my election. At this time some one said they would give me six hundred if necessary.

8th question. Do you know, or have you any reliable information, of any settlements up the Running Water?

Answer. I know of but two houses up the Running Water in a distance of four miles, both of which were unoccupied at the time. I am informed that the valley of the Running Water is settled the distance of ten miles above Niobrarah; but at the time I was there, above alluded to, that the settlers were all in Niobrarah in consequence of a

difficulty with the Indians, and that there was at that time but one man living up that valley.

(Objected to by the counsel for Mr. Estabrook on the ground that it is hearsay.)

9th question. You have stated that your horse was missing in the morning. Did you receive any information as to the place of his concealment?

Answer. I was informed that he was in Major Gregory's stable.

10th question. What efforts did you make, if any, for his recovery, and what was the result?

Answer. I applied to Major Gregory, who said that the horse was in his stable, but that Jimmy had the key, and that I could not get him unless I could find Jimmy. We found Jimmy in the evening and told him we wanted our horse. He replied that he would have to get a lantern; and I went with him to Major Gregory's office for that purpose. Major Gregory told him that his lantern was out of repair, and that he would have to get Westamond's. Jimmy told me to remain, and said that he would be back in a moment, and that was the last I saw of Jimmy.

11th question. Do you know whether Major Gregory is an officeholder, and what office he holds?

Answer. He is agent for the Ponca Indians.

18th question. Who is this James Tufts, the apparent leader of that gang of vagabonds that assaulted you at Mr. Dodson's, and took from you the papers as before stated?

(Objected to by counsel for Mr. Estabrook, on the ground that the question assumes facts to exist which have not been proven.)

Answer. He is the sitting member of the legislature from the district composed of the counties of Cedar, Dixon, and L'Eau Qui Court.

19th question. What are his politics?

Answer. Democratic.

20th question. State with more particularity your knowledge of the settled or unsettled condition of L'Eau Qui Court county?

Answer. L'Eau Qui Court county has but two settlements in it, one is at Zepeota and Frankfort, which is in the southeastern [northeastern] portion of the county, and the other is at or in the vicinity of Niobrarah, which is the

most northern part of the county. There is but one house on the road between Zepeota and Niobrarah, a distance of between twenty-five and thirty miles. The county generally is unsettled. It is also the most northern county in the Territory.

26th question. Of the hundred and twenty-one names that appeared upon the poll-list, how many did you recognize as the names of persons that you knew?

Answer. About six or eight.

27th question. Had you been to any extent acquainted with the people of L'Eau Qui Court county?

Answer. I live in that portion of the county which is passed through by most of the emigrants going up there, and became acquainted with many of them at or before the time of their settlement there.

28th question. Is there not a ferry at Niobrarah?

Answer. I do not know, but there is not except a skiff.

29th question. Would the emigration going from any considerable distance north of Dakota city cross at Dakota or Sioux city?

Answer. Most all the emigration to that part of Nebraska cross[es] the Missouri river either at Sioux city or Dakota.

30th question. Has there been any crossing of emigrants at Dakota for the last six months for the northern part of Nebraska?

Answer. None at all. There has been very little emigration into that part of the Territory for the last year.

31st question. Have you been at all the crossing points, and do you pretend to know all the emigrants that have crossed into northern Nebraska during the past year?

Answer. I have not been at all the crossings. I do not know all the emigrants who have passed into that part of Nebraska for the last year. I know of but two crossings by ferry on the Missouri river above Sioux city.

32d question. Where are those crossings?

Answer. One is [at] Ponca, and the other at Ionia.

33d question. Would not those be the natural crossings for the people emigrating from the extreme northern portion of Iowa, and from Minnesota and Dakota, into the northern portions of Nebraska?

Answer. They would be the natural crossings for emi-

grants from Dakota Territory to Nebraska. The emigration from Minnesota and Iowa would naturally cross at Sioux City.

35th question. Why is it that there has been no crossing of emigrants at Dakota City for the last six months?

Answer. It had no regular ferry boat.

37th question. Have you ever been at Bonhomme City, in L'Eau Qui Court county?

Answer. Not that I know of.

38th question. Do you know the extent of that settlement?

Answer. I do not know that there is any settlement there. I have heard of such a place.

39th question. Do you know how many settlers reside along the Missouri river between Frankfort and Niobrarah in L'Eau Qui Court county?

Answer. No.

40th question. Did you ever visit or hear of the town of Breckenridge in L'Eau Qui Court county?

Answer. I have heard of such a place, and know it to be the terminus of a mail route on which E. G. Lawson was one of the contractors for carrying the mail from Dakota City. I know also that he does not carry the mail to Breckenridge.³²

47th question. How many election precincts are there in the county, and where are they located?

Answer. Two; one at Frankfort and one at Niobrarah, and both on the Missouri river.

48th question. Do not those precincts extend back so as to include the Running Water valley, Breckenridge, and the entire west portion of the county?

Answer. I presume that those two precincts include the whole county, but I do not know anything about it.

Direct Examination Resumed

2d question. You were inquired of in relation to the emigration during the past year to the northern part of the

Territory; will you state whether the population of that part of the Territory including L'Eau Qui Court has increased or decreased during the past year; and if decreased, to what extent?

(Objected to . . .)

Answer. I believe that the population has decreased in all the counties, from the fact that the vote in all the counties north of the reserve was not near as large this, as it was last year, except in L'Eau Qui Court county.

3d question. You have been inquired of concerning Bonhomme and Breckenridge; do you know of any actual settlement at either place?

Answer. I do not.

4th question. Have you any reason to believe, from any information, that there are five voters at either, or both places?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. I have not.

6th question. Where would the voters residing at Breckenridge and Bonhomme, if any, vote?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. I think they would vote at Zepeota or Frankfort, from the fact that Breckenridge is about sixteen miles from Niobrarah, and I think they are much nearer Zepeota.

WEDNESDAY MORNING, December 21, 1859.

John Taffe,³² of lawful age, being first duly sworn according to law, makes the following answers to the questions propounded, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age, 32 years; occupation, lawyer; residence, Omadi, Dakota county, Nebraska Territory.

2d question. What is your present business here at the capital?

Answer. I am a member of the House of Representatives.

5th question. How long have you resided in this Territory, and where have you resided?

Answer. Three years; at Omadi.

7th question. State, if you know, to what extent L'Eau Qui Court county is settled.

Answer. I should think there were from thirty to thirty-five voters in that county during the past fall, with a small proportion of families.

10th question. About in what direction is Niobrarah, and what is the character of the road, and what the settlements on the way, on the usually travelled route, and what are the accommodations for travellers on a winter journey?

Answer. I think Niobrarah is about ninety-six miles north of this place; the general direction being about northwest from this place, and the whole distance being about two hundred miles by the usually travelled route, as I have already stated. The road is generally dry and good, but a portion of it is very hilly. The settlements from this place until you reach Wacapana,³⁴ Cedar county, are at reasonably convenient distances for travellers. The next nearest house from that point is about forty-seven miles; from that house it is about three miles to Niobrarah. In travelling the course of the river the distance between the houses is not so great, but the general distance is considerably increased.

12th question. You have stated in a former answer that there were from thirty to thirty-five voters in L'Eau Qui Court county, will you now state about what portion of that number reside in the precinct of Frankfort and Zepeota?

Answer. I should think there were about twelve. It is called the Zepeota precinct.

13th question. What is the present population of the district you represent compared with that of one year ago, and what the vote at the last October election compared with that of the year previous?

Answer. The population of the district is less than a year ago; the vote is less in Dakota county. The vote of the counties of Dixon, Cedar, and L'Eau Qui Court, was not canvassed before the clerk of Dakota county, as the law requires, and therefore I do not know what the official vote of those counties was. I believe the voters of those coun-

ties were less in number than the previous year. I canvassed the counties for both years.

John McConihe, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age 25 years; occupation, lawyer; residence, Omaha, Nebraska.

2d question. Are you officially connected with the executive branch of the government of this Territory?

Answer. I am the governor's private secretary.

3d question. Do you know anything of the receipt by the governor of the returns of the late elections from the counties of Calhoun and Izard; and, if so, state what you know?

Answer. I do know of the receipt of the returns from Izard and Calhoun counties; I think I took them from the post office myself.

4th question. What did you do with them?

Answer. The returns of Izard county I think were placed in my safe with the other returns. The returns of Calhoun county I sent to the county clerk of Platte county, to return the same with the Platte county returns; Calhoun being an election precinct attached to Platte county, and improperly returned to the governor from Calhoun county. The returns purporting to be from Platte county were sent to the county clerk of Douglas county, and by him opened and handed to me; the law requiring the returns to be made to the governor, I deemed it my duty (not knowing whether these were the returns of Platte county or not, having been handed me by the county clerk of this county) to send the same to the county clerk of Platte county, to return them according to law. I also enclosed with the returns of Platte county the returns of Calhoun county to the county clerk of Platte county, asking him to make return of Calhoun county in accordance to law.

10th question. Did you afterwards receive from the clerk of Platte county what purported to be a return from Calhoun county; and, if so, how long afterwards.

Answer. I afterward received, cannot state the length of time, I think about a week, from the clerk of Platte county, the returns of Platte, Butler, Calhoun, and I think Green was included as a precinct.

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Cross-examination.

6th question. Did you ever see the purported returns from Hall county; and, if so, tell me where you first saw them?

(Objected to by counsel for Mr. Daily)

Answer. I have seen them, and first saw them in a lager beer saloon kept by a German named Wallenburg, in Omaha, I think.

7th question. Do you know where those returns were made out?

Answer. I think in that saloon.

8th question. At what time?

Answer. I could not state definitely as to the time.

(Objected to by counsel for Mr. Daily)

9th question. Who prepared the purported returns from Hall county?

Answer. I could not state as to that. Mr. Wallenburg, who keeps a saloon here, came into my office on Farnam street, with a gentleman who was introduced to me as the county clerk of Hall county. They afterwards left the office and went back to the saloon; very soon I went into the saloon myself, and saw them making out returns of Hall county, which, when finished, were handed to me as the returns of Hall county, directed to the governor.

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FRIDAY MORNING, December 23, 1859.

Stephen H. Wattles, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age 32 years; occupation, acting sheriff of Sarpy county; residence Bellevue, Sarpy county.

2d question. Have you recently been at Fort Kearny,

and at Kearny city; if so, at whose instance and for what purpose?

Answer. I was at Fort Kearny, and also at Kearny city, or Dobytown, as it is called. I went at the instance of Mr. Daily, for the purpose of getting a copy of the poll-book, and investigating the matters of the elections held there and at Nebraska-Centre and Centralia, in Buffalo county.

3d question. Will you describe the place you call Kearny city, or Dobytown?

Answer. It lies on the south side of the Platte river, two miles west of Fort Kearny. I judge there are not over eight houses—three business houses I was in; two of them used as ranches, keeping groceries, liquors, &c., the other was a drinking house or saloon. Rankin's ranch was the largest of any; it is a one story sod or adobe house, also covered with sod; it is about twenty or twenty-two feet wide and sixty long. The other houses are of the same material and one story high, but not as large; the dram shop is probably sixteen by eighteen feet, and the other buildings are about the same size.

4th question. State whether or not the other buildings are occupied as domicils?

Answer. I think they were all occupied with the exception of the one they call the "town house" or "state house," and I do not know whether that was occupied or not; I saw no signs of any one living there.³⁵

5th question. State whether or not Kearny city is on the direct line of thoroughfare between the Missouri river and the mines; and whether that is a point where they cross the Platte river?

Answer. I think it is. I know of no other thoroughfare from a point on the Missouri north of Leavenworth. It is the main crossing place for those travelling west from the Missouri river on the north side of the Platte.

6th question. State whether or not there has been a large amount of travel on the north side of the Platte river, over this route, during the past summer and fall, to and from the mines?

Answer. There has been.

7th question. State what is the southern boundary of Buffalo county.

Answer. It is bounded on the south by the Platte river.

8th question. In what direction is Buffalo county from Kearny city?

Answer. Directly north on the other side of the Platte river; Kearny city being on the south side of the river.

9th question. State how many men you saw at Kearny city, apparently residents of the place and not connected with the army or the fort.

(Objected to by the counsel for Mr. Estabrook . . .)

Answer. I saw not to exceed fifteen. I saw two parties from the mines driving through there, who stopped and made some purchases.

10th question. State whether or not you saw any evidences of agricultural improvement about Kearny city.

(Objected to by counsel for Mr. Estabrook on the ground of irrelevancy.)

Answer. I did not see one acre of cultivated land or a farm house.

11th question. State whether, during your visit there, you were at Fort Kearny, and what number of troops there are there, and what other settlers connected with the army?

Answer. I was at the fort, and was informed there were three companies; I could not say how many others, but suppose a considerable number, judging from the number of teams I saw hauling wood from the island.

16th question. How long were you at Nebraska Centre, and how many men did you see there apparently residents of that place?

Answer. I was there above eighteen hours, and I saw only three persons there who appeared to be residents.

17th question. Describe the place called Nebraska Centre.

Answer. It has one dwelling-house, one storehouse, one barn or stable, and one warehouse.³⁸

18th question. What number of votes purports to have been given there, according to the certified copy of the poll-book now in the hand of the witness, and for whom given for delegate to Congress?

(Objected to by counsel for Mr. Estabrook on the ground that it is not the best evidence.)

Answer. Thirty-eight votes were given, and all of them for Experience Estabrook.

19th question. Describe the place called Centralia.

Answer. There is no such town as Centralia, but [that] is the name given to a precinct. The election purports to have been held at the house of Mr. Johnson, on Wood river.³⁷

20th question. What evidence did you discover, if any, of settlements and improvements in the neighborhood of Nebraska Centre?

Answer. I saw one farm at Nebraska Centre under cultivation, and one or two this side of there just opening for cultivation. There might have been one or two farms more opened, but I cannot swear there were any more.

21st question. State whether or not Nebraska Centre and Centralia are on the direct line of thoroughfare from the Missouri river to the mines.

Answer. They are.

Cross-examination

29th question. You state that you went to Centralia; how many houses did you see about there?

Answer. I might have seen four, five, or six, I cannot say exactly. I saw no other houses than those on Wood river.

30th question. Did you see any houses on the Platte river in Buffalo county?

Answer. I did not.

36th question. Of how many distinct papers did the copies of the returns consist, which you brought in from Buffalo county?

Answer. Two from Buffalo county, and one from what is called the Kearny city precinct.

37th question. In what way were the different slips of paper on which those copies were made connected together when you received them from the clerk of Buffalo county?

Answer. By mucilage.

40th question. Has any person written anything or added anything to those copies since they came into your hands?

Answer. There has been on the one from the poll-books of Kearny city precinct. It was done by me to satisfy my-

self as to the number of actual voters in that precinct. I have added to the name of M. F. Nichols the words, in pencil, "lives in Elkhorn." Opposite the name of William D. Thomas, I have written in pencil "Elkhorn." Opposite the name of L. B. Jenks, I have written with pencil the word "Elkhorn." Opposite the name of Samuel Armstrong, I have written in pencil the word "soldier." Opposite the name of Elisha T. Eldrin, I have written with pencil the word, "Omaha." Upon the other copies there is no writing.

Re-examined by the Counsel for Mr. Daily.

1st question. Opposite many of the names on the copy of the poll-book from Kearny city I see short pencil marks. Explain those marks.

Answer. I went to Mr. Talbot,³⁸ whose name appears as one [of] the judges of the election, and asked him to point out those who were actual voters in that precinct, and those who were not. He asked me to read over the names, and I requested him to designate those who were not voters in that precinct. I read them over, and when I came to a name he said he was not a voter, I made a mark or dash opposite to such name.

2d question. Will you count those marks, and state the number of them?

Answer. Having counted the marks, I make the number one hundred and ninety-seven.

(Objected to by counsel for Mr. Estabrook . . .)

3d question. State whether or not you are certain that you marked accurately, according to the information given to you by Mr. Talbot.

Answer. I am certain.

4th question. Did you learn from Mr. Talbot whether he had long been a resident of that place, and whether he had a general acquaintance with the settlers in that region?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. He told me that he had lived there and at the fort for the last three years, and that he was personally acquainted with all the settlers for twenty miles up and down the river.

Samuel W. Black, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age, 42; Governor of Nebraska; and residence, Nebraska city.

2d question. State, if you please, whether you took any and what steps, and at what time, for the purpose of having an election held, last October, in the county of Buffalo?

Answer. I took no steps whatever in reference to the October election in Buffalo county. But I wish to state all the connexion I had with Buffalo county, in my capacity as governor of the territory or otherwise. Some time in the month of May last, and shortly after my arrival in Omaha, which I think was my first visit subsequent to my appointment, I was either applied to or asked to appoint the county officers for Buffalo county; at or about the same time, applications were received from other portions of this Territory, in the west, requesting me, if I had the power, to organize counties. My belief was that I had no such power; but I investigated the law fully, and was confirmed in my belief that I did not possess the power. I also was satisfied from investigation that I had not the power to appoint officers in an organized county. I found by the statutes, I think of 1855, that Buffalo county was fully organized by the act of the territorial legislature. In some of the counties the legislature has merely defined the boundaries; in others, they make use of the language "organized, or erected into a county." This is my recollection of the language, without having recently examined the statute. In regard to Buffalo county, the title of the act is, "to organize Buffalo county;" and, now having the act before me, I find the language to be, "is hereby declared organized into a county to be called Buffalo;" and, further, "the seat of justice is hereby located at Nebraska Centre." I declined to appoint officers for Buffalo county, but investigated the law, in connexion with Judge Wakeley, who happened to be present when I was looking at the question. He and I agreed, however, about the course which was lawful and proper, so far as Buffalo county was concerned, or any other county in a like situation, which was, as nearly as I recollect, that the county commission-

ers of the nearest county on the east, and not as formerly the probate judge, were authorized to take the initiative steps on the application of the people of the county, in which officers had never been elected. I do not pretend to give the instructions fully, but they were given in accordance with his belief and mine as to what was the law. The papers were returned to me purporting to set forth the choice of officers by the electors of Buffalo county. I think they set forth that the choice was made on the 25th of June, 1859. I cannot recollect all that the papers contained, but there was a request that the officers should be commissioned by the Governor in pursuance of the choice of the people. There was no action taken on this request until after my return from the Pawnee expedition. I directed commissions to be issued without considering them absolutely necessary, but because I understood that it was the desire of the people that the commissions should come from the executive. I ought to state here that I observed in the secretary's office, a day or two ago, in the minute book of that office, that the word *appoint* is used instead of *commission*. This I think is a clerical error, and does not correspond with the request contained in the proceedings transmitted to me. These commissions appear to have been issued July 26, 1859. I wish to state further distinctly that my action in regard to Buffalo county had no reference whatever to the last October election, nor to any other election; but because I was led to believe, and did believe, that the people of the county desired in good faith that the county should be put into working operation, and I am of the opinion (and this no doubt influenced me in some degree to aid them so far as possible and right) that as many inhabited counties as possible should be fully organized and invested with all their rights, not only as an act of justice to them, but they pay their share of the territorial taxes, which is an act of justice to the other counties of the Territory. From the 26th of July last, I had no further connexion with Buffalo county until I received the returns of the election.

3d question. Can you state, sir, whether the application or request of which you have spoken, in relation to Buffalo county, was in writing, and, if so, whether it is on file in the executive department?

Answer. The first application, in May, was verbal, and

I recollect very distinctly that I refused to have anything to do with it on a mere verbal representation, but stated to the person or persons that the proper course was for the people to make their application to me in writing, or to send any proceedings on which they wished me to act; and their proceedings, whatever they were, are, I believe, on file in the secretary's office.

4th question. You spoke of a return of the selection of officers made by the people; is that also on file?

Answer. I believe it is, although I cannot speak positively of these or any other papers, as my habit is to hand them to the secretary or my private secretary.

5th question. You have said, sir, that applications were made to you for the organization of other counties besides Buffalo county; did you issue commissions for the officers of any of those other counties?

Answer. I did not issue commissions, because those counties were not organized counties, and my judgment is that the legislature only can organize counties. The application to me, so far as Buffalo county is concerned, was not to organize the county, for that the legislature had already done.

SATURDAY MORNING, December 24, 1859.

6th question. Are we to understand it to be your opinion, then, that Buffalo county became an organized county in virtue of the act creating it, by reason of the title of the act and of the use therein of the words "organized into a county," instead of the words "erected into a county," or the words "constituted a county," used in other acts?

Answer. I do not stop, as I have a perfect right to do, to take exception to this most extraordinary and illegal question. I have already stated why I thought it right to pursue the line of conduct set forth in my testimony already given. I say the question is extraordinary and illegal, because the witness is asked to testify on oath as a witness to his present opinion of a purely legal question. My opinion is, that Buffalo county was organized into a county because the legislature said so. That passing an act entitled "An act to organize Buffalo county," which is as follows: "Section 1. *Be it enacted by the council and house of representatives of the Territory of Nebraska, That all that portion of territory included in the following*

limits is hereby declared organized into a county to be called Buffalo: commencing at a point in the centre of the Platte river ten miles east from the mouth of Wood river; running thence westward, up the southern channel of the Platte, to the mouth of Buffalo creek; thence north thirty miles; thence east to a point directly north of the place of beginning; thence south to the place of beginning. The seat of justice is hereby located at Nebraska Centre. Section 2. This act to take effect from and after its passage. Approved March 14, 1855,"—did mean all that it said, and did organize the county in law. I answer further, it is not because the word used is "organized," instead of the words either "constituted" or "erected" into a county, but because the words of organization in this act, to my mind, are entirely sufficient to show the intention of the legislature. I consider the title of the act as indicative of the legislative intention, when taken in connexion with the body of the act. Further, and I am of the opinion that "constituting" or "erecting" into a county might have the same effect, or that other words of similar import might convey the same idea, as for instance, Douglas county, in which the capital of the Territory is situated, is "hereby declared to be known and called by the name of Douglas county," although there is no other language of positive organization. So Otoe county, in which Nebraska City is situated, was organized by the following language: "is hereby declared and called by the name of Otoe county," there being no other words of positive organization as to that county, except those which I have quoted. I might say further that I think there is a manifest distinction, in the territorial statutes, between organizing a county by positive enactment and merely defining their boundaries.

7th question. State, if you please, what, in your judgment, constitutes the essential difference between an organized and an unorganized county?

Answer. I answer that I decline to give any opinion on that subject, inasmuch as I am not able to see that it has any connexion whatever with the matter in hand, and is asking my opinion on a mere abstract question of law.

8th question. Supposing that at the date of the passage of the law creating the county of Buffalo, the district of country embraced within its limits was notoriously destitute of white inhabitants, would you still be of opin-

ion that it became, in virtue of the act, *de facto* an organized county?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. I answer, first, that I know nothing about the condition of the Territory when this act was passed, and suppose that the legislature knew their own business. When I construe laws I endeavor to construe them by the well known rules laid down. And further, I have stated fully all that I know about the facts in this case, and have given my reasons for the course I thought it right to pursue; besides, I am not a law student under examination before this commission.

11th question. At the time you examined the laws and came to your final conclusion relative to Buffalo county, as stated by you yesterday, did you examine the act of 1855, at page 222, entitled "An act in relation to new counties?"

Answer. My recollection is, that Judge Wakel[e]y and myself examined that act.

12th question. On what ground was it that you came to the conclusion that this act was inapplicable to the case of Buffalo county?

Answer. We did not come to the conclusion particularly that it was inapplicable to Buffalo county as differing from any other county, but that the act itself was modified by laws of a later date as to the powers of a probate judge.

13th question. State, if you please, what laws you now refer to.

Answer. We considered that the act of January 23, 1856, pages 70, 71, and 72, taken in connexion with other acts which we also examined, transferred the powers of the probate judge, in a great many respects, to the county commissioners, and this was one of them.

14th question. Mention, if you please, the other acts to which you have referred.

Answer. I do not now recollect them, and it was difficult then to find them by the indexes; but I know that we made a very thorough examination of the laws, and agreed that the power now was in the county commissioners which had formerly belonged to the probate judge.

15th question. What power?

Answer. The power to order an election, in the first instance, for county officers.

16th question. Did you consider the act in relation to new counties to have been modified in any other particular except by the substitution of *county commissioners* for the *judge of probate*?

Answer. I do not recollect that our attention was fixed on anything else but a modification of the powers of the probate judge generally.

17th question. Your answer seems to infer, then, that you were of opinion that the act in relation to new counties, modified in the manner you have stated, by the substitution of the county commissioners for the probate judge, was applicable to Buffalo county, in common with other counties; state, if you please, whether or no you design to be so understood.

Answer. I did not say that in the way the question is put.

18th question. How, then, do you desire to be understood upon this point?

Answer. I design to be understood as saying that whether that act applied to Buffalo county or not, the probate judge, as the law now stands, was not the person to order an election in the first instance.

19th question. I did not inquire as to that; answer the question as put, if you please.

Answer. I have given what I think is a sufficient and fair answer. Other questions may have arisen *then* on that act, but I am not now able to recall them.

20th question. Do you remember whether, in answer to the applications that were made to you in behalf of Buffalo county, you referred the applicants to the act in relation to new counties as their guide?

Answer. I do not think that we did; but under all the laws then in force gave them what we, or I, supposed was the right course to be pursued.

21st question. What is the course you prescribed?

Answer. It would be very hard for me or any man to recollect all the details of the law, but I recollect that having all the laws before us we pointed out the course indicated by them, and directed the person or persons to see that the laws were followed.

22d question. State, if you remember, whether the directions you gave were in any respect variant from those

contained in the act in relation to new counties, except by the substitution of *county commissioners* for the *judge of probate*; and, if so, in what respect?

Answer. I do not recollect.

23d question. What is your belief on this point?

(Objected to by the counsel for Mr. Estabrook on the ground that it refers to his belief and not to matters of fact.)

Answer. My belief would of course depend upon my recollection, and I have stated my recollection as nearly as I am able; but I now say, by way of explanation, that the principal difficulty seemed to be as to whether the judge of probate or the county commissioners were clothed with the power of ordering an election in the first instance for county officers.

24th question. Have you now any doubt that the "act in relation to new counties" was in all other respects applicable to the county of Buffalo?

Answer. I have already answered that question, substantially.

25th question. Answer it now directly, if you please.

Answer. I do not see how I can answer the question more directly than I have, besides you are asking me what is my present opinion as to a matter of law, which it is neither your right to ask nor my duty to give.

26th question. State, if you remember, whether the return of proceedings, in pursuance of your directions, showed a compliance with this act?

Answer. I have not looked at the returns since they were received, and then but hastily, nor do I think they showed affirmatively a compliance with the law, nor was it necessary that they should, nor did I, nor do I suppose that the returns would have been made to me at all, if it had not been for the expressed wish of the people that the officers chosen should be commissioned by the executive. A fact now occurs to me in this connexion which I omitted to state yesterday, that one reason for the desire that I should commission the officers was that this was a distant county through which a great many emigrants were passing and repassing, and it was feared that there might be difficulties and disturbances of the peace, and it was supposed that the officers of the law would be more respected if they had commissions under the seal of the Territory.

27th question. Does the "act in relation to new counties," or any subsequent act with which you are acquainted, direct or authorize the governor to issue commissions to county officers?

Answer. It does not to my knowledge, but the second section of the original act does say, in relation to the governor, that "he shall commission all officers who shall be appointed to office under the laws of the said Territory;" under this clause a great many persons think that he should commission all officers under the laws of the Territory. I do not think that it is necessary, but there is certainly the appearance of authority for it.

28th question. Have you in any other instance, or, so far as you are informed, has any one of your predecessors in office, issued commissions to persons chosen to office by the people?

Answer. I don't know what my predecessors have done from personal knowledge, but my information is that they have, and I do know that I have in several instances. Apart from the territorial officers elected by the people who are commissioned by the governor, commissions have been issued to each one of the district attorneys, and if there is any territorial law positively authorizing or requiring it, I am not aware of it.

28th question. The question was designed to embrace county officers only; answer the question, if you please, as thus restricted.

Answer. I do not know of any other commissions having been issued to county officers, but I would not hesitate to issue them if requested and I supposed it would answer any good purpose.

30th question. State, if you remember, by whom the oral application respecting Buffalo county, made to you in the first instance, as you have mentioned, was made?

Answer. I think the first application was made by Dr. Henry, and probably one or two others.

31st question. Are you certain that it was made by any others excepting Dr. Henry?

Answer. I am not certain as to that, but I am certain that at the time, I was not willing to take his word for it, or that of anyone else who applied verbally.

32d question. State, if you remember, by whom the subsequent application in writing you have mentioned was handed or transmitted to you.

Answer. I cannot say; I found the paper in my office, I think, with a great many others that had accumulated during my absence at Nebraska city.

33d question. Were the signatures to that paper many or few? and about how many, according to the best of your recollection?

Answer. I know there were several, but whether many or few I cannot tell; for I suppose I looked over whatever paper was in my office in connexion with twenty other papers that had accumulated during my absence from Omaha; but I wish it understood here that I took no official action in regard to Buffalo county until after the county officers were chosen by the people, or appeared to be chosen by the people.

34th question. State whether the paper to which you have referred purported to be the returns of an election held in Buffalo county; and, if so, whether it contained any evidence on the part of the commissioners of Hall county of their having ordered such an election?

(Objected to by the counsel for Mr. Estabrook for the reason that it is not the best evidence that the nature of the case admits of.)

Answer. I think I have stated that I never looked at the paper but once; at all events, that I have not seen it since about the time it was received, and do not pretend to give its contents fully. I do not think it purported to be election returns in the usual form, but a certificate that certain persons named in the paper were chosen by the voters of the county, each person and office being set down. I do not think that there was anything said in that paper about the commissioners of Hall county or any other county.

35th question. You stated, in your answer yesterday, that, after receiving the paper to which you have referred, you ordered commissions to be issued to the officers of Buffalo county: do you mean to be understood as having authorized any person other than yourself to issue commissions?

Answer. Certainly not. I directed my private secretary to make them out, as I do in all cases. I have no doubt I signed them all; at least that is my usual practice.

36th question. Will you please to examine this paper, [here a paper was presented to the witness, purporting to

be a commission to one of the officers of Buffalo county,] and state whether or not that is one of the commissions which you have referred to as having been issued by you?

Answer. This commission is the commission to Henry Peck, probate judge of Buffalo county; and I recollect he was the person returned as probate judge for that county. This is one of the commissions referred to.

37th question. State, if you please, in whose handwriting that commission is filled up?

Answer. In the handwriting of John McConihe, my private secretary, with the exception of the words "until his successor is elected and qualified."

38th question. In whose handwriting are the words "until his successor is elected and qualified?"

Answer. That I am not able to say.

39th question. State whether you are acquainted with the handwriting of Charles A. Henry?

Answer. I am not acquainted with it so as to testify on the subject.

40th question. State, if you please, whether the signature is in your own proper handwriting?

Answer. No, sir; the signature is in Mr. McConihe's handwriting; but I have no doubt he signed it by my authority, although in regard to this particular paper I do not recollect the facts.

41st question. Will you please to state whether that seal upon the paper is the great seal of the Territory of Nebraska?

Answer. I believe it is.

42d question. Will you please to state whether the signature of J. Sterling Morton is in his own proper handwriting?

Answer. It is not. I believe it is also Mr. McConihe's handwriting. In regard to Mr. McConihe, personally, I desire to make a brief explanation. I suppose there was probably less strictness in regard to these commissions than usual, because I considered them mere matters of form, and that they did not add anything to the right of the person elected to the office; Mr. McConihe, no doubt, signed my name by my direction and authority, and I presume Mr. Morton's name by his authority. Mr. Morton and he are very intimate. Whether Mr. McConihe is in the habit of signing Mr. Morton's name, I cannot say; Mr. Luce does frequently, and by Mr. Morton's authority.

MONDAY MORNING, December 26, 1859.

The examination-in-chief having closed on Saturday evening, I wish to state a fact in connexion with the Buffalo county commissions brought to my recollection by a conversation I have had with Mr. McConihe since the examination closed. On the 26th of July I was called in some haste to Nebraska city, I think by information that Mrs. Black was ill. I left Mr. McConihe some of these commissions, either filled up or in blanks, with my signature attached; enough for all the offices had not been signed, and I directed him to sign my name to as many as might be necessary to complete the list of the officers returned as having been chosen by the people; these (that is all those returned) included probate judge, sheriff, treasurer, justices of the peace, and I think even constables.

SAMUEL W. BLACK.

THURSDAY MORNING, December 29, 1859.

William Cook, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. 22 years of age; occupation, farmer; residence, Omaha, N. T.

2d question. State where you were on the 11th day of October last, the day of the late general election.

Answer. I was on the Pawnee reserve at that time, at a place called Genoa.

3d question. State whether or not you voted there at that election.

Answer. I did vote at that election.

4th question. State, if you know, how many votes were polled there at that election, and for whom polled as delegate to Congress?

Answer. Twenty-three votes polled; twenty for Estabrook and three for Daily.

5th question. State whether or not you saw any person, and if so whom, put votes into the ballot-box for others than himself.

(Objected to by counsel for Mr. Estabrook as leading.)

Answer. There were no votes put into the box except

by the judges, but there were two tickets put into the hands of the judges by a man by the name of Hudson, the postmaster there, for two men who were at the ferry at the time, about a mile or a mile and a half from the place. When Hudson put them into the hands of the judges, there were some objections made; the matter was discussed for a few minutes, when the judges put them into the box.

6th question. About how long had you been there before the day of the election?

Answer. I got on to the reserve the 5th day of September.

7th question. What was your business or occupation there?

Answer. I was working for James L. Gillis,³⁹ the agent of the Pawnees.

Cross-examination.

1st question. Did you understand that the men who sent their votes resided in that precinct?

Answer. Yes, I believe that they both lived in that precinct.

2d question. You state that Genoa, where the election was held, was on the reserve; when was it ascertained that it was embraced within the Pawnee reserve?

Answer. I do not know when it was ascertained. It was surveyed while I was there, about the first of September.

3d question. Did not that settlement at Genoa spring up before the lines of the reserve were ascertained?

Answer. I do not know exactly when the first settlers went there. If the lines were not run before the survey was made in September, the settlement was made first.

4th question. Were not the lines run in September, and was it not then first ascertained that Genoa was included in the reserve?

Answer. The lines were run in September, but when it was first ascertained that Genoa was in the reserve I cannot tell; but some of the settlers had left there in the spring before, believing they were on the reserve.

5th question. Did not Judge Gillis, when it was ascertained that Genoa was on the reserve, compensate the settlers for their improvements and notify them to leave?

Answer. I do not know exactly. He bought some frame and log houses, some crops, and one thing or another, of the settlers. I do not know about his notifying them to leave.

6th question. How long, judging from the appearance of the houses and improvements, had that settlement been made?

Answer. It is a little hard to tell by the appearance of the houses; judging from the ground they had broke I should think the settlements had been made about two years.

7th question. How near to Genoa did the south line of the reservation come, by the survey which you have mentioned?

Answer. The settlement, I should think, was about three-quarters of a mile from the south line.⁴⁰

8th question. Were not the people of the town and settlement considerably exasperated when they found that they were included within the reservation?

Answer. The feeling was that they thought it was a hard case to have to leave after breaking up their land and laying out their town.

9th question. The two men that you speak of as working at the ferry did you see when you went on to the reserve in September?

Answer. Yes, they were there. One of them lived at the ferry and the other had lived at the settlement, but moved to the ferry before the election.

10th question. At what time were the Pawnee Indians moved on to their reservation?

Answer. The main body of the Indians came there a few days before the election, but about twenty of the head warriors had previously been there and selected the town of Genoa for their village. The agent, however, put them across Beaver creek and reserved Genoa for their schools and mechanic shops.

Re-examined by counsel for contestant.

1st question. State, if you know, about how far from Genoa is the eastern line of the reservation?

Answer. About five miles.

Question by counsel for Mr. Estabrook.

1st question. In what county is Genoa situated, and what day did you enter the county?

Answer. Monroe county. I entered the county on the fourth of September, 1859.

FRIDAY MORNING, December 30, 1859.

James L. Hindman, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Age, twenty-five years; occupation, farming; and residence at Shinn's Ferry, on the Platte river.

2d question. State whether you have ever lived in Calhoun county; and, if so, when and how long have you resided there; and when did you leave the county?

Answer. I have lived in Calhoun county; I first moved there in May, 1857; I lived there until the following September, when I left; but returned again in May, 1858. I left there for my present residence in the last of August of this year.

3d question. State whether you are acquainted with the settlements in that county; and, if so, where they are?

Answer. I believe I am acquainted with all the settlers in the county. There is one settlement of two families in the northwestern part. There is another settlement, known as the Wauhoo, in the southeast part of the county; there are four families there. These are all the settlements in that county.

4th question. State, if you know, how many votes there are in each of the two settlements you have named, and give the names of the voters?

Answer. There are but two voters in the northwest settlement, named Solomon Garfield and James Blair. In the Wauhoo settlement there are three voters, named Stambaugh, Totten, and John Aughey; besides a young man named Price, who, if twenty-one years of age, is also a voter. I am not certain that he has attained that age.

5th question. State whether any election precincts have ever been established in that county, or any election ever been held there?

Answer. I do not know of any precincts ever established there, or any election held there.

6th question. State what other settlement there was ever in the county; and what is the present condition of that settlement?

Answer. When I returned there in 1858, I found a settlement there called Neapolis, in the north part of the county, in range 7 and 8, and township 17. The settlement was entirely abandoned in the spring of 1859—every settler left there.

7th question. About how many did that settlement consist of? and what has become of the settlers?

Answer. From fifteen to twenty men were there laboring and making claims; they all left that county.

8th question. State whether Calhoun county has been the residence, until recently, of the Pawnee tribe of Indians?

Answer. Yes; it was at the time I was there. At the time I left the county they were there back and forth; but they finally left in the fall of the present year.

9th question. What kind of locations or residence had the Pawnee Indians in Calhoun county?

Answer. They were located convenient to the Platte river, in two villages, about four miles apart.

Cross-examination.

10th question. Don't you know that during the last summer and autumn claims have been taken and settlements made along the Platte river by men from the east as well as those returning from the mines?

(Objected to by counsel for Mr. Daily . . .)

Answer. I know of few from the east, and very few who have made permanent settlement. I know of some that started for the mines last spring, but who did not get there, and turned back and started trading posts on the south side of the Platte river, in Butler county.

11th question. Does not the Platte river run through a portion of Calhoun county, and is not the great line of thoroughfare west on the south side of the Platte river, along the Platte through a portion of Calhoun county?

(Objected to by counsel for Mr. Daily . . .)

Answer. I always understood the main channel of the Platte river, from the third standard and upward, to be the line.⁴¹ I may have been misinformed. The main travelled road is through a portion of the county, but not on the Platte.

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TUESDAY MORNING, January 3, 1860.

John D. Neligh,⁴² of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. 28 years; occupation, running a saw-mill, of which I am part owner; residence, West Point, Cuming county, Nebraska.

2d question. How long have you resided in the Territory of Nebraska, and how long at West Point?

Answer. I have been in the Territory two years last Christmas, and at West Point two years next March.

3d question. In what direction from Cuming county is the county of Izard?

Answer. So far as I know it is west. It is so understood by us up there.

4th question. State about how far from West Point is the line dividing Izard from Cuming county?

Answer. Ten miles from the centre of our town.

5th question. State whether your town is the farthest settlement west from the Missouri river in that direction; and, if not, what town or settlement is farther west?

Answer. There are towns laid out near the line further west, but not inhabited. DeWitt is the furthest town west that is inhabited; this is five miles northwest of West Point.

6th question. State whether you have ever been in Izard county, and whether you have now or ever had any knowledge of any settlements there?

Answer. I have been in Izard county. I have no knowledge of any settlements there.

7th question. What office do you hold in Cuming county?

Answer. That of probate judge.

8th question. State whether, if in fact there were any

settlements or inhabitants in Izard county, you would not be likely to know it?

Answer. I would be likely to know it if there were any there, I think.

9th question. State if it is not notorious among the settlers in your part of Cumming county, that the county of Izard is wholly uninhabited?

(Objected to by counsel for Mr. Estabrook . . .)

Answer. It is.

Cross-examination.

14th question. Have you ever been in the southeast part of the county of Izard?

Answer. No.

15th question. If there had been inhabitants living in the southeast corner of Izard county on the day of election, how would you have known it?

Answer. By people travelling backwards and forward, and stopping generally at our place, I would be likely to have found it out.

16th question. Is there any road leading from your place to the southeast corner of Izard county?

Answer. There is no travelled road, but people go that way.

17th question. When they go that way, where do they go to if there are no settlements and no person living there?

Answer. I have noticed them going on the surveys.

18th question. Did you see the army that went on the Pawnee expedition?

Answer. I saw Governor Black and some of the men at Elkhorn city going out.

Cross-examination resumed.

1st question. What are your politics?

Answer. Opposition to democrats, and anti-slavery.

2d question. Who did you vote for at the last election for delegate to Congress?

Answer. Mr. Daily.

OMAHA, NEBRASKA TERRITORY, December 5, 1859.

SIR: In pursuance of the notice heretofore given to you of my intention to contest your election as the delegate of the Territory of Nebraska to the thirty-sixth Congress, I hereby notify you that I intend, on Friday, the 16th instant, at 9 o'clock a. m., before the Hon. George Armstrong, judge of the probate court in and for the county of Douglas, in the said Territory, at his office in the city of Omaha, to commence the examination of the following persons touching my right to a seat in the said Congress as such delegate, namely: John M. Thayer, E. D. Webster, John McConihe, A. S. Paddock, James B. Coit, Charles A. Henry, Andrew Bidwell, residing in Omaha, Douglas county; E. D. [H.] Rogers, Robert Kettle, residing in Fremont, and Henry W. DePuy, residing in Fontenelle, Dodge county; Leander Gerrard, Monroe county; William Artman, West Point, Cuming county; William S. [H.] James, George B. Hinsdale, of Dakota city; John Warner, Logan, John Taft [Taffe], Omidia,⁴³ in Dakota county; Sterrett M. Curran, William H. Russell, Washington county; James Hindman, Butler county; William Stoli [Stolle], Frederick Heddi [Hedde], Grand Island City, Hall county; Stephen E. Wattles, Bellevue, Sarpy county; Benjamin P. Rankin, Samuel W. Black, Nebraska City, Otoe county; John Reck, Francis Beecher, Columbus, Platte county; B. F. Shelly, Samuel Smith, Robert Hagaman, D. B. Dodson, David Benner, William Benner, Niobrara, L'Eau Qui Court county; D. B. Crocker, Woodriver; and to continue the examination from day to day at the same place and hour until the same is completed.

SAMUEL G. DAILY,
By ALFRED CONKLING,
His Attorney.

OMAHA, NEBRASKA TERRITORY, December 23, 1859.

SIR: In pursuance of the notice heretofore given you of my intention to contest your election, as the delegate of the Territory of Nebraska, to the 36th Congress, I hereby notify you that I intend, on Tuesday the 3d day of January instant, at 9 o'clock a. m., before the Honorable George Armstrong, Judge of the Probate Court, in and for the county of Douglas in the said Territory, at his office in the

city of Omaha, to commence the examination of the following persons touching my right to a seat in the said Congress as said delegate: R. M. Clarke, Jonathan Wise, John H. Hayes, Plattsmouth, Cass county; George Obest, Washington county; G. B. Stillman, John Talcott, Kearny City; W. H. Fitzgerald, Council Bluffs, Iowa; J. Sterling Morton, Nebraska City; Magnus Wallenburg, George Reese, Charles O'Henry, — Miller, . . . and to continue the examination from day to day at the same place and hour until the same is completed.

SAMUEL G. DAILY,
By ALFRED CONKLING,
His Attorney.

A.

NIOBRARA, N. T., June 30, 1859.

DEAR SIR: Your favor came duly to hand. I hope to be able at some future time to merit your expressions of good will and kindness, but I am truly sorry to say that what you ask is entirely out of my power to give—under existing circumstances it is impossible. Since you left I have not been able to gain the least clue as to the whereabouts of those poll-books. They were stolen the first night you were here. I informed Mr. Coit of the fact the next day. It is impossible for me to say or to know what particular one took them. I think several were connected with it. I am strongly suspected of leaguings with you two gentlemen, consequently am not to be trusted at present. I can but regret our past conduct towards you two gentleman [*sic*] while here. I hope we can make it good next year, and that our next meeting will be under very different auspices.

I am, sincerely, your obedient servant and friend,
R. W. HAGAMAN.

Wm. H. James, Esq.

B.

Having received the returns of the election held on the 11th day of October, instant, I, to-day, the 13th day of October, 1859, in the presence of the following two persons, viz: Wm. A. Hagge and Frederick Hedde, opened the said

returns of the election held in the precincts of Hall county, Nebraska Territory, viz: the Grand Island precinct and the Wood River precinct.

We found the election returns of said Wood River precinct signed by one judge of election only, and by one clerk only, and there was no oath, neither of the judges nor of the clerks of election, certified upon the poll-books of said precinct.

Therefore, considering the election held on said day in said precinct and the votes cast at said election to be illegal, we, the acting county clerk, and the above named two householders, believed it our duty, not to count as legal votes the votes cast at the said illegal election of the said Wood River precinct; therefore we certify that,

At an election held in Hall county, in the Territory of Nebraska, on the 11th day of October, 1859, the following named persons received the number of votes annexed to their respective names for the following described offices:

<i>For delegates to Congress.</i>		<i>Votes</i>
Samuel G. Daily		31
Experience Estabrook		3

Territorial commissioner.

John H. Kellom	31
William E. Harvey	3

Territorial treasurer.

James Sweet	31
William W. Wyman	3

Territorial auditor.

Henry W. DePuy	31
Robert C. Jordan	3

Territorial librarian.

Oscar F. Davis	31
Alonzo D. Luce	3

District attorney for the first judicial district.

Phineas W. Hitchcock	31
James G. Chapman	3

This is to certify that the above is a true abstract of the votes cast in said county at said election for delegate to Congress and for territorial officers.

THEODORE F. NAGEL,
Acting county clerk.
 FREDERICK HEDDE.
 WM. A. HAGGE.

CONTESTED ELECTIONS IN NEBRASKA 261

I hereby certify that the foregoing is a true and correct copy of the abstract of votes cast in Hall county, Nebraska, as given by the county clerk of said Hall county, now on file in this office.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the Territory of [L. S.] Nebraska. Done at Omaha (sic.) city this, 29th day of December, A. D. 1859.

J. STERLING MORTON,
Secretary of Nebraska.

C.

Abstract of the votes cast in the counties of Platte, Greene, Butler, and Calhoun, at the territorial decision [election] in Nebraska Territory, held on the 2d Tuesday in October, being the eleventh day of October, A. D. 1859.

Shell Creek precinct.

Estabrook	36	Daily	7
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Centre precinct.

Estabrook	6	Daily	6
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Buchanan precinct.

Estabrook	13	Daily	6
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Shell Creek precinct.

Estabrook	13	Daily	0
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Butler county.

Daily	11	Estabrook	5
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Calhoun county.

Experience Estabrook received 28 votes for delegate to Congress.

Samuel G. Daily received four votes for delegate to Congress.

William W. Wyman received 30 votes for territorial treasurer.

Robt. C. Jordan received 30 votes for territorial auditor.

Alonzo D. Luce received 30 votes for territorial librarian.

William E. Harvey received 30 votes for territorial commissioner of common schools.

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COLUMBUS, PLATTE COUNTY, N. T., October 14, 1859.

We hereby certify the above to be a true abstract of the returns given from the several precincts in the district composed of the counties of Platte, Greene, Butler, and Calhoun.

C. B. STILLMAN,
Acting County Clerk.

LORIN MILLER,
JACOB LEWIS, *Householders.*

D.

I, John S. Willis, clerk of the county of Izard, Nebraska Territory, and we, John G. Valentine and Franklin Holt, disinterested [free]holders thereof, chosen by him, do hereby certify that the following is a correct abstract of the vote cast for delegate in Congress and territorial officers in the several precincts of the county, aforesaid, at the general election held on the 11th day of October, A. D. 1859:

PRECINCTS.	E. Estabrook.	S. G. Daily.	R. C. Jordan.	H. W. DePuy.	W. W. Upman.	James Sweet.	A. W. Luce.	Oscar F. Davis.	W. E. Harvey.	John H. Kellam.
Hammond	4	3	4	3	3	3	4	3	4	3
Beaver Creek	17	0	16	0	16	0	16	0	16	0
Number of votes.. ...	21	3	20	3	19	3	20	3	20	3

For delegate, Experience Estabrook received 21 votes, S. G. Daily received three votes; for territorial auditor, Robert C. Jordan received 20 votes, H. W. DePuy received three votes; for territorial treasurer, William W. Wyman received 19 votes, James Sweet received three votes; for librarian, A. D. Luce received 20 votes, O. F. Davis received three votes; for superintendent of public schools, W. E. Harvey received 20 votes, J. H. Kellam [Kellom] received three votes.

JOHN S. WILLIS, [L. S.]
County Clerk of Izard County.

Attest:

JOHN G. VALENTINE,
FRANKLIN HOLT.

E.

At an election held in the town-house of Nebraska Center, in the precinct of Nebraska Center, county of Buffalo, and Territory of Nebraska, on Tuesday, the 11th day of October, 1859, the following named persons received the number of votes annexed to their respective names for the following described offices:

Experience Estabrook had 38 votes for member of Congress.

William W. Wyman had 38 votes for territorial treasurer.

Robert C. Jordan had 38 votes for auditor.

Alonzo D. Luce had 38 votes for librarian.

William C. Harv[e]y had 38 votes for commissioner of common schools.

James G. Chapman had 37 votes for district attorney for first judicial district.

Richard C. Barnard had 38 votes for member of the legislature.

JOHN HAMILTON,
MORRISON M. MILLAR,
CONSTAN B. REYNOLDS,
Judges of Election.

ROBERT J. JOHNSON,
SAMUEL HOOD,
Clerks of Election.

I do hereby certify that this is a true copy of the poll-books for the precinct of Nebraska Center, in Buffalo county.

GEORGE MILLER,
County Clerk for Buffalo County, Nebraska Territory.

1 Smith Kinsey	13 R. S. Johnson
2 P. S. Gibbs	14 Morrison McMillen
3 Harvy Esters	15 Samuel Hood
4 J. J. Lester	16 S. R. Brown
5 James E. Boyd ⁴⁴	17 Anan Henry
6 Charles Wilson	18 Henry Wilson
7 John H. Young	19 John Haphil
8 George Miller	20 James Tierney
9 C. H. Swits	21 Carby Gooderman
10 M. Tory	22 James Mernane
11 William Mixlow	23 Alexander Givyneny
12 John Hamilton	24 John W. Britt

25 Peter Kinney	32 B. Norman
26 Milo Tourend	33 Gustavus Stout
27 David Narcy	34 W. L. Brinton
28 Jeremiah Cox	35 T. J. Dorlan
29 J. C. Dorman	36 David Anderson
30 John Lux	37 John Davis
31 T. Brown	38 B. F. Brown

F.

At an election held at the house of J. H. Johnson, in the precinct of Centralia, and county of Buffalo, and Territory of Nebraska, on Tuesday, October 11, A. D. 1859, the following named persons received the number of votes annexed to their respective names for the following described offices:

Experience Estabrook, 16 votes for member of Congress.

William W. Wyman, 16 votes for territorial treasurer.

Robert C. Jordan, 16 votes for auditor.

Alonzo D. Luce, 16 votes for librarian.

William E. Harv[e]y, 16 votes for commissioner of common schools.

James G. Chapman, 16 votes for district attorney for first judicial district.

Richard C. Barnard, 16 votes for member of legislature.

JOEL W. JOHNSON,

THOMAS PAGE,

JOHN EAMES,

Judges of election.

J. W. WILSON,

JOHN THORP,

Clerks of election.

1 Henry Peck

2 Thomas Page

3 John Ames

4 J. H. Johnson

5 J. B. Lewis

6 John Thorp

7 J. W. Wilson

8 Henry Sharp

9 John B. McCallister

10 James McCallister

11 George Gurney

12 John Cramer

13 Andrew Berry

14 Oliver M. Anderson

15 Joseph Houff

16 Patrick Carroll.

I do hereby certify that this is a true copy of the poll-books for the precinct of Centralia, in Buffalo county.

GEO. MILLER,

County clerk for Buffalo county, Nebraska Territory.

G.

At an election held in the town-house in Kearny city, in the Kearny city precinct of the county of Buffalo, and Territory of Nebraska, on the 11th day of October, A. D. 1859, the following named persons received the number of votes annexed to their respective names for the following described offices:

Experience Estabrook had 238 votes for member of Congress.

William W. Wyman had 238 votes for territorial treasurer.

Robert C. Jordan had 238 votes for territorial auditor.

Alonzo D. Luce had 238 votes for territorial librarian.

William E. Harvey had 238 votes for commissioner of common schools.

James G. Chapman had 189 votes for district attorney of the first judicial district.

Richard C. Barnard had 179 votes for member of the legislature.

JOHN TALBOT,
GEORGE REEVES,
GEORGE HAMMOND,
Judges of election.

W. L. LEARNORD,
J. CHARLES W. BURK,
Clerks of election.

I do hereby certify that this is a true copy of the poll-books for the precinct of Kearny city precinct, in the county of Buffalo.

GEORGE MILLER,
County Clerk of Buffalo county, N. T.

Poll-books of an election held in the Kearny city precinct, on Tuesday, October 11, A. D. 1859.

1 Charles A. Henry	12 David Hammond
2 George W. Reeves	13 John Dillenner
3 George Hamond	14 Louis Clermont
4 Charles W. Burk	15 A. J. Tinker
5 William M. Leanord	16 John A. Morrow
6 Claudius McGibbin	17 Joseph Johnson
7 John Talbot	18 Hugh Morgon
8 Sterrit M. Curran	19 M. F. Nicholls
9 Charles Miers	20 George Obert
10 Frank Barret	21 Joseph Dubois
11 A. Wilson	22 John Misconare

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|------------------------|-----------------------|
| 23 James Elliott | 70 James McLaughlin |
| 24 William D. Thomas | 71 John T. Herd |
| 25 L. B. Jenks | 72 William S. Johnson |
| 26 James L. Long | 73 Thomas Connell |
| 27 Charles A. Connelly | 74 William H. Cole |
| 28 J. L. Ensley | 75 Hugh McLane |
| 29 William H. Harford | 76 Ley McLane |
| 30 Charles Wilson | 77 Edward McGarvin |
| 31 Matthew Dougherty | 78 M. Moreland |
| 32 Patrick McLancy | 79 Daniel Hacerty |
| 33 John Butler | 80 Edward Fitzgerald |
| 34 William Butler | 81 Richard Ganson |
| 35 Thomas Wright | 82 John Hancock |
| 36 Charles Yates | 83 Peter Kelly |
| 37 Anthony Oulst | 84 C. Simpson |
| 38 Ernest Kebeck | 85 A. J. Knight |
| 39 Wm. H. Hatly | 86 Samuel Armstrong |
| 40 Robert Johnson | 87 George F. Hammond |
| 41 John Ellis | 88 Alex McKinley |
| 42 A. J. Thompson | 89 Oliver Lindsley |
| 43 John Eby | 90 Norton McGriffin |
| 44 Patrick Mullally | 91 R. M. Lovejoy |
| 45 Joel Bacon | 92 Jonathan Martin |
| 46 John S. Rohrer | 93 Henry G. Selmon |
| 47 Sharp Groover | 94 Hiram Judge |
| 48 Artus Stephenson | 95 Robert Rocket |
| 49 Charles Provo | 96 Charles Hersey |
| 50 Edward Lane | 97 William Burke |
| 51 Charles Miller | 98 Wilson Fleming |
| 52 James McKinley | 99 Robert Strain |
| 53 George Barton | 100 Thomas Logan |
| 54 James Ford | 101 John Beard |
| 55 Charles Burket | 102 George H. Atkins |
| 56 David Johnson | 103 David Atcheson |
| 57 Samuel Redman | 104 William Smith |
| 58 Nicholas Henry | 105 Samuel Haylette |
| 59 John Buell | 106 Robert Haylette |
| 60 William Buchanan | 107 Stewart Newell |
| 61 Samuel Black | 108 William Wilkins |
| 62 James Trobridge | 109 Robert Arnold |
| 63 Franklin Rush | 110 John Wilson |
| 64 Thomas Tutt | 111 John Brobst |
| 65 William Qugsh | 112 Joseph Holmes |
| 66 James Walle | 113 William Allen |
| 67 Hugh Mackey | 114 Wilson Jones |
| 68 William Harrison | 115 Daniel Deggit |
| 69 John Jackson | 116 James Neely |

117 Lewis Redick	164 Thomas Mulray
118 Jonathan Hollam	165 George O. Neil
119 Joseph Van Kirk	166 Jarvis J. Cramb
120 Thomas Munsey	167 Emery Curling
121 Robert Oliver	168 Joel P. Owens
122 Mitchal Slusher	169 David Rawson
123 William F. Hayes	170 John Vansze
124 Thomas Clossen	171 Charles P. Barker
125 Benjamin Sullin	172 Justice W. Swift
126 Noble Heath	173 Albert Swift
127 John Rockevell	174 Charles P. Nash
128 James Davidson	175 Corridan Nash
129 Ira Lacock	176 James G. Brown
130 James Humphrey	177 Dwyot T. Talcott
131 Divid Lindley	178 A. J. Sweet
132 William Carothers	179 Ely F. Felt
133 A. Mitchell	180 James Morris
134 Stern Hoyt	181 Edward Jones
135 Lewis Boyckwin	182 William A. Barnard
136 Smith Mott	183 Jonas D. E. Graff
137 Richard Colson	184 L. A. Fay
138 Philander E. Moon	185 D. A. Richmond
139 Addison M. Mott	186 A. J. Forbs
140 Edward E. Woods	187 Thomas A. Gilbert
141 Edward M. Woods	188 William E. Gilbert
142 William Meedye	189 Fay E. Van Alstine
143 William K. Mursene	190 Henry W. Mead
144 Sydney M. Starr	191 Andrew J. Cross
145 Seth F. Herd	192 John A. Brandon
146 James McCormack	193 Ely S. Stephens
147 Oliver O. McNary	194 R. E. Bucklan
148 Eldredge L. James	195 Henry W. Evrette
149 Orvill I. Shattock	196 Henry M. Butts
150 Nathan P. Eaton	197 W. L. Norcross
151 Porter E. Snow	198 Freland D. Ewitt
152 Norman Russell	199 Daniel F. While
153 Harman E. Jones	200 Alford Ritson
154 Harvey T. Harvey	201 Charles Sawright
155 Jeremiah O. Whaler	202 James E. Wallace
156 Norman K. Felt	203 Theodore Matthews
157 Farran T. McTeltin	204 Charles Pages
158 Ely J. Cowford	205 William Rockland
159 F. W. Enlewin	206 R. M. J. Huston
160 Frank A. Mason	207 Sylvester Cross
161 James R. Nye	208 Edmond Russell
162 Ray Hammonth	209 George P. Wayneright
163 James W. Edson	210 Christopher Nuckolls

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211 James W. Maloney	225 Thomas Jameson
212 Edward T. Cartwright	226 James E. Hitchcock
213 Jones N. Bennett	227 Jonathan Nelson
214 Joel J. Griffith	228 Homer Leiner
215 Edwin L. James	229 Harry Nash
216 Marvil Pegamm	230 Gustavus Nash
217 Stephen McNutts	231 Dwight H. Bamming
218 Lewis L. Page	232 Elam Beach
219 Andrew J. Edwards	233 A. S. Babcock
220 Frank C. Anderson	234 Alfred Bishop
221 Amos Cartwright	235 A. McComas
222 Jeremiah Nelson	236 Aaron Mullville
223 David Edmonds	237 Elsie T. Eldrin
224 Watson Wheeler	238 Daniel Bell.

H.

COLUMBUS, N. T., December 28, 1859.

I hereby certify that the poll-books of Calhoun county, Nebraska Territory, have been abstracted from my office, and are not in my possession.

FRANCIS G. BEECHER,
County clerk of Platte county, Nebraska Territory.

Copy of the proceedings of a meeting of the electors of Buffalo county, upon which officers were appointed by his excellency Samuel W. Black, Governor of this Territory.

FRIDAY, June 25, 1859.

At a meeting of the electors of Nebraska Center, N. T., for the purpose of recommending suitable persons to fill the several offices of Buffalo county, on motion of Charles A. Henry it was moved and carried that Joel T. Mann act as chairman of the meeting, and George T. [F. (?)] Mead as secretary.

On motion of Charles A. Henry, Henry Peck was chosen as a suitable person for probate judge, and Charles T. Lurtz as sheriff; Joseph Huff, commissioner of the central precinct; Patrick Care [Carl (?)], justice of the peace; and John Evans as constable in central precinct.

On motion, George F. Mead was chosen as county clerk.

On motion, James E. Boyd was chosen as a suitable person for county register.

On motion of James E. Boyd, William Hill was chosen as commissioner of the eastern precinct.

On motion of Mr. Peck, George Moore was chosen as a suitable person for county treasurer.

On motion of James E. Boyd, Joel T. Mann was chosen as a suitable person for commissioner of Kearny precinct; and on motion of H. J. Stark, E. J. Stark was chosen as a suitable person to fill the office of justice of the peace, and Walter Wilson for constable in Kearny precinct.

On motion of Mr. Peck,

Resolved, That Dr. Henry, with men living in the eastern precinct, do have them recommend suitable persons to fill the offices of justice of the peace and constable in said precinct.

Dr. Charles A. Henry offered the following resolution, which was adopted:

Resolved, That we recommend the above named gentlemen to hold the several offices to which they have been nominated by this meeting, and request the governor of this Territory to commission them for said offices.

There being no further business, on motion of James E. Boyd the meeting adjourned *sine die*.

JOEL T. MANN, *President*.

GEO. F. MEAD, *Secretary*.

Having carefully compared the foregoing with the original now on file in my office, I hereby certify that it is a true and correct copy of the same. In testimony whereof, witness my hand and the great seal of the Territory of Nebraska hereunto affixed. Done at Omaha City on this the 20th day of January, A. D. 1860.

[L. S.]

J. STERLING MORTON,
Secretary of Nebraska.

Letter of Governor Samuel Black.

EXECUTIVE CHAMBER, NEBRASKA TERRITORY,
OMAHA, July 26, 1859.

DEAR SIR: I have this day appointed the following officers for Buffalo county, and herewith enclosed you will

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find the commissions of such officers, which you will please deliver to the respective officers appointed, viz:

Henry Peck	Probate Judge.
Charles H. Surtz [Lurtz?]	Sheriff.
James E. Boyd	Register.
George F. Mead	County Clerk.
George Moore	" Treasurer.
Joseph Huff	" Commissioner.
William Hill	" "
Joel P. Mann	" "
Patrick Carl	Justice of the Peace.
E. J. Stark	" "
J. S. Stafford	" "
John Evans	Constable.
Walter Wilson	"
Truman Gardner	"

I am, sir, very respectfully, your obedient servant,
SAMUEL W. BLACK,
Governor of Nebraska Territory.

James E. Boyd, Esq.

George F. Mead having resigned, George Miller was appointed to fill the office of county clerk.

SAMUEL W. BLACK,
Governor of Nebraska Territory.

I certify that the foregoing is a true and correct copy of the original now on file in my office.

In testimony whereof, witness my hand and the great seal of the Territory of Nebraska hereunto affixed. Done at Omaha city on this the twentieth day of January, A. D. 1860.

[L. S.]

J. STIRLING MORTON,
Secretary of Nebraska.

AN ACT to organize the county of Kearny, to define its boundaries and to locate the county-seat thereof.

Section 1. *Be it enacted by the council and house of representatives of the Territory of Nebraska,* That all that portion of the Territory of Nebraska within the following limits, viz: beginning at a point in the centre of the main channel of the Platte river fifteen miles east of the flag-staff at Fort Kearny, running thence due south to the dividing line between the Ter-

ritories of Kansas and Nebraska; thence in a direction due west one degree; thence due north to the centre of the main channel of the Platte river; thence, following the meanderings of said stream, to the place of beginning, is hereby declared to be known and called by the name of Kearny county.

Sec. 2. The seat of justice of said Kearny county is hereby fixed and permanently located at Kearny city in said county, as surveyed, platted, and lithographed by the Kearny city company in the spring of 1859.

Sec. 3. The governor of the Territory is hereby authorized and required to appoint and commission the county officers of said county, who shall continue to act in their various offices until the next annual election in the Territory of Nebraska, and until their successors are elected and qualified.

Sec. 4. Until the district of country west of said county is organized into counties the same is hereby attached to said county of Kearny for election, judicial and revenue purposes.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved January 10, 1860.

SAMUEL W. BLACK,
Governor of Nebraska.

SECRETARY'S OFFICE, *Nebraska Territory.*

Having carefully compared the above copy, I hereby certify that it is a true and correct copy of the original act now on file in this office.

In testimony whereof, I have hereunto set my
[L. S.] hand and affixed the great seal of the Territory.
Done at Omaha, January 21, 1860.

J. STIRLING MORTON,
Secretary of Nebraska.

This is to certify that at a general annual election held in the several precincts of and to the county of Buffalo, and Territory of Nebraska, on Tuesday, October 11, A. D. 1859, the following named persons received the number of votes annexed to their respective names for the following described offices:

Experience Estabrook had 292 votes for member of Congress.

William W. Wyman had 292 votes for territorial treasurer.

Robert C. Jordan had 292 votes for territorial auditor.

Alonzo D. Luce had 292 votes for territorial librarian.

William E. Harvey had 292 votes for commissioner of common schools.

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James G. Chapman had 232 votes for district attorney first judicial district.

In testimony whereof, I have hereunto attached my name for official purposes this 12th day of October, A. D. 1859.

GEO. MILLER,
County Clerk of Buffalo county, N. T.

SECRETARY'S OFFICE,
OMAHA CITY, January 17, 1860.

I certify that the within is a true and correct copy of the returns from Buffalo county, Nebraska Territory, now on file in my office.

In testimony whereof, witness my hand and the [L. S.] great seal of the Territory of Nebraska hereunto affixed. Done at Omaha on this 19th day of January, A. D. 1860.

J. STERLING MORTON,
Secretary of Nebraska.

EVIDENCE IN THE NEBRASKA CONTESTED ELECTION CASE.

March 5, 1860.—Referred to the Committee on Elections and ordered to be printed.

TERRITORY OF NEBRASKA, *County of Douglas, ss:*

Be it remembered, that on the 31st day of December, A. D. 1859, before me, George Armstrong, probate judge in and for the county of Douglas, in the Territory of Nebraska, at my office in the city of Omaha, in the county aforesaid, George B. Graff was produced as a witness; and having been by me duly sworn to answer truly all such questions as should be proposed to him touching the matter of the contested election of Experience Estabrook as delegate from the Territory of Nebraska to the 36th Congress, Samuel G. Daily, contestant, then and there testified as follows:

In the matter of the contested election of Experience Estabrook as delegate to the 36th Congress from the Territory of Nebraska Samuel G. Daily, contestant.

Testimony taken on the part of the said Experience Estabrook, at the city of Omaha, in the said Territory.

Present: Mr. Kinney, Mr. Richardson, and Mr. Redick, attorneys for Mr. Estabrook; Mr. Conkling, Messrs. Pease and Paddock,⁴⁵ attorneys for Mr. Daily.

SATURDAY MORNING, December 31, 1859.

Dr. Graff, the first witness, was examined without previous notice by consent of counsel for Mr. Daily.

George B. Graff, of lawful age, being first duly sworn according to law, makes the following answers to the questions proposed, to wit:

1st question. What is your age, occupation, and place of residence?

Answer. Forty-three years of age; receiver of public moneys at Dakota; residence, Dakota city.

2d question. How long have you resided at Dakota?

Answer. About nine months.

4th question. Have you ever been in L'Eau Qui Court county; and if so, when did you visit that county?

Answer. I was there in September last.

14th question. Judging from the appearance of the settlements and the people you saw, how many voters, in your opinion, were there in that county?

(Objected to by counsel for Mr. Daily, on the ground that the object of the inquiry is not a fit subject of mere opinion.)

Answer. I had formed an opinion before the election as to how many votes would be polled there. A year previous there were polled in the county over 80 votes. I knew of considerable emigration to the county last summer. I saw 15 wagons going through our place to Bonhomme island at one time. The impression formed on my mind up there was that they could poll over 100 votes in that county; this is the opinion I formed up there.

Cross-examination

2d question. You have spoken of several settlements in that county, will you name those, if any, which you actually visited?

Answer. I was at Croy's Grove, Frankfort, Zepeota, Collins's Grove, and Niobrarah.

3d question. Describe each of those places, specifying the number of inhabitants you saw in each, and their character?

Answer. At Croy's Grove there was a single family; a Frenchman and his son were the only votes there. At Frankfort I saw probably half a dozen houses. At Zepeota there are, I think, three dwellings certain, and perhaps more. At Collins's Grove, one house. At Niobrarah, I suppose there are twenty good dwellings and a large hotel that could be inhabited.

4th question. You spoke of other settlements that you did not visit; will you name those places again, and state whether you have any personal knowledge of them?

Answer. They are Bonhomme island ⁴⁶ and Breckenridge; all I know in relation to them is what I have heard.

19th question. You stated in your examination in chief that you visited the settlements at Croy's Grove, Zepeota, Frankfort, Collins's Grove, and Niobrarah, and you afterwards said you knew a settlement ten miles up the Running Water; what knowledge have you of that settlement, if you did not visit it?

Answer. The knowledge acquired in my office from persons filing their declarations of settlement and intention to pre-empt; the plats being in the office.

20th question. How far is Frankfort from Zepeota?

Answer. They are contiguous; Zepeota has been abandoned as a town, and has been pre-empted for farming purposes.

21st question. What distance from Frankfort are Croy's Grove and Collins's Grove, and in what direction?

Answer. Croy's Grove is about eight miles southeast of Frankfort, and Collins's Grove is about five or six miles southwest from Frankfort.

22d question. Are not Croy's Grove and Collins's Grove, Bonhomme, and Breckenridge much nearer Frankfort than the town of Niobrarah?

Answer. All except Breckenridge; that I am not certain of.

Re-cross-examined.

1st question. Do you reside in the Covington precinct?

Answer. I do not.

2d question. Were you there on the night of the election when they canvassed the votes?

Answer. I was not.

3d question. Then, why do you say there were five more ballots than names upon the poll-lists, and that the five votes were given for Daily?

Answer. I saw the certificate and poll-list, talked with the judges and clerks and citizens of the Covington precinct, who gave me the information; and knowing the political preferences of the votes of that precinct, I know that more votes were counted for Mr. Daily than were legally cast for him.

4th question. You stated in your examination that yourself, Patrick, and Collier, urged the claims of Estabrook upon local grounds only; had you no political motive in seeking so urgently the elevation of Estabrook?

Answer. In urging the citizens of the upper counties, I never compromised General Estabrook, by representing him as anything but a democrat. I did urge republicans to forget their political preferences in voting for delegate; and in the success of General Estabrook, I looked for and expected nothing save that he would not be unfriendly to the interests of the northern portion of the Territory, and his election a triumph for the democratic party, having then nor now no political favor to ask or expect for myself.

6th question. Is it regarded by you as a part of the legitimate business of a federal officer in this Territory to assist in obtaining the greatest possible number of democratic votes at each election?

Answer. I believe this question impertinent, intended to be offensive, and will not answer it.

7th question. State whether, during the canvass for delegate in this Territory, at the last election, the federal officers residing here were required to advance money to aid in the election of Estabrook, and the success of the democratic party in the Territory?

Answer. Since I have held office under the present administration, I have never been asked for nor paid one dollar for electioneering or other political purposes, nor do

I know of any other officer in the Territory having been asked for or paid any money for like purposes.

8th question. State at whose instance you made that political journey to L'Eau Qui Court county, and at whose expense the journey was performed.

Answer. At my own, without consultation with anybody. The expense was borne about equally between Patrick, Collier, and myself. The whole amount was less than five dollars; and as I said before I went in pursuance of an intention formed since my first residence in the Territory.

POINTS AND ARGUMENT OF THE SITTING MEMBER

Buffalo county.

The first specification in the printed notice attacks the validity of the vote of Buffalo county, first, for the reason that the county was unorganized, and, second, on the ground that Fort Kearny was attached to Buffalo county as a precinct, and was without any county.

The evidence relied on to support the first proposition is that of Governor Black, a witness on the part of the contestant, and certain papers found on pages 94 and 95 of the printed testimony. The first fact noticeable in the testimony of Governor Black is the total negative of all fraud or improper design in the transaction detailed by him. Whatever was done was in good faith. As early as the month of May, and about the time the immense immigration to Pike's Peak, Utah, California, &c., was passing through the country, a desire was felt by those who had settled and were settling there to have the county clothed with some form of authority for self-preservation and protection. They made application to the governor, who, together with Hon. E. Wakeley, one of the judges of the supreme court, examined the matter and advised them precisely what they would have to do to set the machinery of county government in motion. He informed them that his commission was needless. But the exigencies of the case demanded something more summary, in appearance at least, to protect the inhabitants against the violence of a disappointed and enraged throng returning from the gold mines. To gratify the settlers, therefore, he issued com-

missions, or authorized his private secretary to do so, to such persons as had been chosen or seemed to have been chosen in that county for the several offices. His connexion with the affairs of the county wholly ceased on the 26th day of July. Whether the selection referred to was through the ballot-box—whether it was regular or irregular under the law, is not made to appear; and the papers printed on pages 94 and 95 cannot be introduced in connexion with the matter, as they come from no authentic source—are, at most, private, extrajudicial, and unauthorized, and were never offered in evidence, either upon notice or otherwise, before any examining officer, and by their date do not purport to have been called for, even, until fourteen days after the testimony had closed. (See objection to 34th interrogatory, p. 67.)

After the 26th of July until the 11th of October, when the election was held, seventy-seven days elapsed, a space of time within which, if the county was not already organized, a perfect and complete organization could be effected. Now, the presumptions of law are in favor of regularity, and I hope it will not be asking too much when I claim the advantages of the rule in my behalf. Governor Black states what he did in the early part of the season to meet an emergency, (see question 26, page 66, also question 42,) but he does not pretend to state or know all that was done; and until it is shown affirmatively, in support of the affirmative allegation of the fact, that the county was not duly organized, the point is not before us for consideration. How easy, and how legitimate, would it have been to ask Governor Black to produce the returns from Buffalo county for identification, and then call on the clerk of that county, who was notoriously within reach of the process placed at the disposal of parties by the act of 1851, to know if they were the same transmitted by him, and if so, to learn of him by what authority he transmitted them, and to what power he was indebted for his official creation. This would have been seeking information at its legitimate source. But the proof in this instance, as in most others, seems strangely intended to establish only a negation, and leave a wide margin to be traversed by conjecture and suspicion.

The second point relates to the division of Buffalo county into precincts, including Fort Kearny precinct, and the number of votes cast in each.

Now, I undertake to say that there is not a word of testimony relating, proximately or remotely, to one of these points, which would not, if insisted on by a reputable lawyer, before a tribunal of reputable lawyers, degrade the professional standing of the one, and insult the official dignity of the other. The only proof is that of Wattles, who details the second-hand statements of certain individuals, themselves, of course, competent witnesses. And I am happy to be able to call to the mind of the committee the disclaimer of the exceedingly able gentleman who opened this case, to have the similar testimony of the clerk of Platte county regarded as evidence by the committee. Is Kearny precinct attached to Buffalo county? By whom is it proved? In making the returns from Buffalo county, was the vote of Kearny City embraced in it? What witness says so? Is Buffalo county divided into precincts at all? Where is the testimony? The only evidence, save that contained in the abstract on page 98, whose merits I have discussed, that Buffalo county ever cast a vote or sent a return to the governor, is found on page 55, in Wattles' answers to questions 12, 13, and 14. He states, in answer to three very leading questions, in substance, that he went to Fort Kearny for the poll-books, saw George Miller, whose name appears on the papers as clerk, sign the same, and helped him copy the list, and produces exhibits E, F, G. Now, who is George Miller? Is he the clerk? His own affix is the sole evidence of it. If he is the custodian of these lists, must he not come forward and swear to them? Or, if they are claimed to be official, must they not have the authentication of the seal?—(See Blair vs. Barrett, 16, 17.) The answers of Wattles to cross-questions 36, 37, 38, 39, and 40, on page 58, and also in his re-examination on page 59, forbid the idea that it was intended as a *record*, or anything else than a private memorandum, upon which he says he made a variety of annotations, and can they be *official* if Buffalo is not organized? and is it not yielding the question of regularity of organization to claim this certificate as official? And if they are official or otherwise, are they the identical returns received and reckoned in by the board of canvassers? and what evidence is afforded by them of the location or limits of any particular precinct in which they purport to have been cast? A true solution of these questions would

leave very little of this case, so far as the testimony of Wattles is concerned; but it was said by the able counsel for the contestant that one deposition on page 3, that of Comly, relating to Buffalo county, was a little out of place. He had reference to its *position* in the printed volume. I agree that it is not only out of place where it is found, but it would be equally out of place whatever page of that volume it might occupy.

Section three of the act of 1851 provides that the officer authorized to issue subpoenas "*shall reside within the congressional district in which such contested election was held.*" The officer before whom this deposition was taken resides in Dayton, Ohio, where the notice required the parties to attend, and whence this paper seems to have been sent to this House.

Section six provides that the notice shall contain a statement of the place of residence of the witness. By reference to the notice on page two, it will be found that this requirement has been wholly disregarded. Section six also provides that the party "*shall, at least ten days before the day appointed for the examination of the witnesses, give notice in writing,*" &c. This notice was served on the evening of the 6th of February, to be taken on the 16th of the same month. The objection here is, first, the notice was not given at least ten days before the day appointed for the examination of the witness; second, the testimony taken on the 16th was beyond the time limited by law. As to the first point, the rule of law is, that where ten days' notice is to be given, one day is to be reckoned inclusive, and the other exclusive. But where, as in this case, notice is to be given ten days either before or after the happening of a particular event, then ten entire days must intervene, and both extremes be reckoned exclusive. —(Sec. 3, Deneo [See 3 Denio], 12; 1 Texas, 107; 1 Iowa, Green's, 164, 492; 10 vol. U. S. Dig., 406, sec. 7.) As to the second point, the sixty days within which testimony must be taken would expire on the 14th day of the month at furthest, and this testimony was taken on the 16th. It is proper to add that there was no appearance on my part, and the deposition was taken under protest. But let us, for the argument, admit this testimony, and also that of Wattles, and how do they harmonize? The young man, Combes [Comly], saw a variety of sad sights at a place

which he calls "Fort Kearny;" and among them he saw three returned "Pike's Peakers," named James Low, Stephen C. Inslee, and William Karlew, all vote for Experience Estabrook. This case now, for the first time, presents a point of analogy with other cases where fraudulent votes are complained of. We have found the polls open and men voting; and among them three, whose names are mentioned, who are not legal voters, and who voted for a particular candidate. Let the aggregate, therefore, be diminished the number of votes thus fraudulently cast. For this purpose we turn to the list exhibited by Wattles, marked "C", purporting to be the Kearny City poll-books, in order to expurgate the offending names. After a thorough search, however, it is ascertained that no such names are to be found in the whole list.

A novelist once introduced a liar as one of his characters. To mitigate the public scorn of such a character, however, he found it necessary to invest him with unusual attributes. He said it required no skill to tell the truth, any one could do it; but a liar should be a genius, a man of high mental attainments. There is a philosophy in this which I commend to all who attempt to make the testimony of Comly harmonize with that of Wattles. "False in one, false in all," is the translation of a Latin law maxim, and if Comly made a mistake as to the three names, might he not as to the balance. So, if Comly is truthful, then is Wattles false. Another point is presented by the testimony of these two witnesses worthy of attention. Comly's statements relate to a place called "Fort Kearny."

It was suggested by the contestant, in response to this palpable contradiction, that "James L. Long," No. 26, was intended for James Low, and that at No. 28, "J. L. Ensley," was intended for Stephen L. Inslee, and this, too, without adducing any proof to establish the proposition. As the maintenance of this contest depends so almost entirely upon inference and presumption, and requires the invention of the wholesome rule that all inferences and presumptions are in favor of regularity and integrity, it may not be unreasonable to demand that "Low" shall be interpreted "Long," and "J. L. Ensley" "Stephen L. Inslee." Constructions quite as absurd are demanded; why not this?

The second interrogatory to Wattles, and the answer

thereto, reveal the fact that Kearny City, or Dobytown, is another and distinct place. If the testimony of Wattles and his exhibit "G" prove anything, they establish the fact that the election to which that testimony relates was held at some place called Kearny City, a precinct in Buffalo county, without, to be sure, identifying any particular spot of earth bearing that cognomen; while the election to which Comly refers was at another place, and bearing another name.

Shall the House be asked to reverse the doctrine of presumptions, and infer some impropriety or irregularity fatal to my certificate, when none is shown?

Wherever may be the location of the "Kearny City" visited by Wattles, and whatever may have been done there, it is nevertheless true that his "Kearny City" is not the only one; for the history of Nebraska would show that, in the nomenclature of the numerous cities of that Territory heretofore, this name had been a favorite. One of the most flourishing cities on the Missouri, now merged in Nebraska City, was incorporated by the legislature, and entered at the land office by that name. And other cities bearing that name, as is well known to all old settlers in Nebraska, have been projected on either side of the Platte river in the neighborhood of Fort Kearny.

But suppose we take it for granted, as in the absence of testimony we must if we consider the proposition at all, that the Kearny City visited by Wattles is identical with Fort Kearny, and that *both* of these were the *one* place referred to in "exhibit G," and that the clerk whose name is affixed is *legally* such, (barring the allegation of illegality of everything relating to Buffalo county,) and that the exhibit of Wattles was identical with the returns sent to the governor; that the board of canvassers canvassed them, and that they were then placed legally in the custody of the secretary, and by him properly exhibited before the examining officer, who duly transmitted them to this House, and that my certificate of election rested in part upon them as its basis; thus, like the story of the house that Jack built, bringing the matter step by step from the polls in Kearny City to the seat here for which a contest is waged. Still, where is the evidence that it was "not included in the bounds of any county," and was improperly attached to Buffalo county? No witness attempts to fix

its locality, to give its latitude and longitude, to describe its township and range, or its metes and bounds; and who shall say, in the absence of proof, that Fort Kearny and Kearny City are not embraced within the limits of some one of the numerous counties created by the enactments of the Nebraska legislature? Wattles, in answer to the forty-third question, says he was told the precinct ran to the Rocky mountains. On page 113 of the post office directory of 1859 it is laid down as in "Clackamas county."

The next inquiry is, was it, if attached at all, improperly attached to Buffalo county? The laws of Nebraska provide that unorganized counties shall be attached to the county lying directly east for election, judicial, and revenue purposes. Two counties lying upon either side of the Platte, whether the boundary should be the centre of the tortuous stream or either bank, would present many points of contact, where a portion of one would be directly east of a portion of the other; and the spirit of the law does not demand that the inhabitants of a county whose boundaries are thus interlocked shall pass beyond, over a large space of unoccupied country, to find an organized county presenting a larger portion of eastern surface. There are many instances in Nebraska where a county is bounded by two or more counties directly on the east. Can there be a doubt that application could be made to either, and that the validity of the organization thus effected could never be impaired by the consideration of the breadth of the county to which it became attached?

Allusion is made to the large number of votes said to have been cast in Fort Kearny or Kearny City, and an inference is attempted to be drawn from it unfavorable to the validity of the election.

When it is remembered that this was the midway station of the great contractors, Russell, Majors & Co., who sent to and past that point from two to four supply trains each week, each train consisting of twenty-five to thirty wagons drawn by six yokes of oxen each; that at this point the trains were inspected, the repairs were made, the freight repacked, the disabled laborers and stock recruited, the hay and forage for present and future supply gathered; that this was the great radiating point for all the thoroughfares crossing the Missouri from the mouth of the Kansas to the mouth of the Running Water, whether going to

Pike's Peak, California, Utah, Oregon, or Washington Territory; that it was a point to which was attracted large numbers of dealers in stock, supplies, and merchandise; that a large force of contractors is always called there in fall and late summer to supply the military post with winter's wood and hay; that the year 1859 was marked by the wild, maniacal rush of at least one hundred thousand persons to Pike's Peak and back, all passing this point; that an abundance of fertile land, just then surveyed and opened for settlement, lay spread out attractively before them in that vicinity, the wonder is that so few attended the polls; and that Comly, when he intimates that no more than sixty voters were there, had not shared the fate of Ananias and Sapphira.

But laying aside all considerations of the absence or insufficiency of proof relating to Buffalo county, and looking at the whole subject as would a family party or a town meeting, could any one be found to dispute the following facts, viz:

1. That in that county the polls were opened in the usual manner and in good faith.

2. That they were presided over by persons acting under color of office and authority, and in good faith.

3. That actual and legal voters cast their ballots there in good faith. And now shall it be contended that all these, whatever may be their number, shall be disfranchised by reason of a lack of form or the omission of some technical duty on the part of those intrusted with the execution of the law? Such a rule would place the rights of whole communities at the mercy of a few individuals. If, then, the testimony should bring us to this point, and if illegal votes are complained of, let them be pointed out and stricken from the majority. This is the rule in other cases; why shall it not be in this?

Calhoun county.

The grounds upon which the votes of this county are sought to be rejected, contained in the second and third specifications of the contestant's notice, are "that, in fact, there was no election held in either of the said counties of Saline, Calhoun, and Izard, and the returns purporting to come from the clerks of said counties are wholly fraudu-

lent; that all that portion of the territory erected into said counties is entirely uninhabited by white men, and these facts also were well known to the canvassers."

This charge is wholly abandoned as to Saline, where it is notorious that a colony settled just before the election, and most of them too late to be voters, and the *grounds* of the charge are essentially abandoned as to Calhoun. It is evident, from the reasoning of counsel on this subject, (pages 8 and 9, Thom[p]son's argument,) that no confidence is felt in the proof to sustain the charge that "*no votes were cast in Calhoun, and that there were no inhabitants in it.*" But the circumstance of their transmission by McConihe to the clerk of Platte county is urged as a reason for rejecting them.

The first objection to this argument is, that it was not charged in contestant's specification. The next is, that it was sent there for greater regularity under the operation of some law upon which he was not interrogated; and whether the proceeding was regular or irregular, either the identical return originally made to him, or one essentially the same, was retransmitted to him by the clerk of Platte county; and as no diminution or alteration reaching its merits is complained of, such action on the part of the clerk could not justify its exclusion; moreover, the irregularity is nowhere shown. The only remaining points for consideration are those contained in the specifications 2 and 3.

1. *The fact of organization.*

On this point no proof is exhibited, and of course no doubt is raised.

3. *That the county was uninhabited by white men.*

To sustain this charge "the act of 1856, page 200," (page 8,) the testimony of Hindman, (p. 75,) Rogers, (p. 21,) and Kettle, (p. 10,) are introduced. By the act referred to, the boundaries of the county embrace ranges 5, 6, 7, 8, and parts of 9 and 10 east, and townships 13, 14, 15 and 16 north. By reference to the map, as furnished by the Commissioner of the General Land Office, it will be seen that the county is about 32 miles in length on its southern boundary, and precisely 24 miles in width from north to south; and that from a point some distance below Fremont to the western extremity of the county, a space of

from one to six miles intervenes between the northern boundary of the county and the Platte river. Hindman swears that he moved into the county in 1857, (page 75, answer 2,) and settled in township 17, range 7, (cross-examination, p. 77, 2d question.) He is doubtless right as to the time and place of his settlement, but wholly wrong when he supposed it was embraced in Calhoun county, as may be seen by the reference to the act of 1856 and the map.

Rogers resides in Frémont, (question 1, page 21,) one and a half or two miles from north line of Calhoun county, (question 7, page 22,) (Kettle says two and a half miles,) (page 11, question 12;) crossed at Shinn's Ferry, and came down the Indian trail, (question 12, page 23.) How far down the river he went he does not say, but probably to a point opposite Frémont, where he crossed to his home. He does not know exactly the area of Calhoun county, (page 25, question 12.) He says its greatest length east and west is over twenty-four miles, and about twenty-six miles north and south, when from the act referred to, and the maps, it appears that it is over thirty miles east and west, and precisely twenty-four north and south. At all times, save the once when he has been into Calhoun county, he entered it at Frémont island, and went but a mile or two into the interior, of course not reaching Calhoun county, (question 1, page 27.) Kettle says there was a settlement about two years ago, (*i. e.*, in the fall of 1857,) in Calhoun county, close by the river, called "Neapolis," (question 13, pages 11 and 12.) Hindman refers to the same, and says it was in ranges 7 and 8, and township 17, (page 76, question 5.)

From all this testimony we gather very clearly that there was a space of country between the Platte river and Calhoun county which was a sort of lost district, no one knowing precisely where it belonged, but clearly not in Calhoun county, and it was over this that the mousing parties, hired *per quantum meruit*, were sent roaming in search of frauds. Did ever mortal hear of such evidence to sustain such a charge! Looking at the maps, the law referred to, and the evidence adduced, and the inference is irresistible that neither Hindman, Rogers, nor Kettle were ever in Calhoun county at all; or if at all, in but a small portion at the northeast part. If evidence of this kind is to be resorted to, is it not a circumstance as strange

as it is significant that nothing is revealed of the entire southern portion of the county? And yet from the maps we learn that in the southeastern portion of the county is the town of "Excelsior," and in the extreme corner, at the mouth of Salt creek, is "Saline," which were indicated on the surveys as returned to the surveyor general in 1857, and which have appeared on all the maps since then, and that the southwestern corner, of which Rogers says he knows nothing, (page 27, 3d interrogatory,) is crossed by the great thoroughfare from Nebraska City to Fort Kearny, over which, beside the vast amount of emigration, the great transportation trains of Majors & Russell have been constantly passing, (see map marked ,) and that upon such thoroughfare, at the head of a small stream, has sprung up a town called "Valparaiso," as indicated upon the land office maps and Colton's map of 1860. All these appear fairly upon the maps, within the boundaries of Calhoun county, in a portion of it which no one of the witnesses pretends ever to have visited, or of which he has any knowledge; and yet from such testimony you are asked to *infer* that the county is without inhabitants.⁴⁷

It is proper to say, in justice to the candor of the gentleman who addressed the committee, (Mr. Thompson,) that he admitted that the hearsay of the clerk of Platte county was not legal evidence. This obviates all necessity of referring to the testimony of William Thomas Clarke, (page 79.) The admission enunciates a principle, moreover, which the committee will find abundant opportunity to apply in their examination of the case.

Izard county.

The tale of this county is told by Nelegh [Neligh], Kettle, and Thayer. Of these, Nelegh is the only one who has any knowledge of its boundaries by actual inspection. He went up the north or east side of the Elkhorn, and entered that county, where he says he did, near the northeast corner, (p. 81, ans. 4 and 6,) and went into the county between six and seven miles back, (p. 81, ans. 10 and 11.) This visit was in June, 1858, (ans. 8,) for the last time, (ans. 9.) Does not know, of his own knowledge, whether there are any settlers in the county of Izard or not, (p. 81, ans. 12.) Since this witness paid his visit, other counties

in the Territory have been populated by comparatively large communities, and there is nothing to forbid the presumption that the same may be the case here. This observation, moreover, in the extreme corner of the county, beyond the Elkhorn, affords no criterion by which to judge of the balance of the county, even at that period. The only remaining witnesses are Thayer and Kettle. Both of these derived their knowledge from the same source, and acquired it at the same time. If the object had been to find willing witnesses, who had been into the county, but under circumstances to preclude the possibility of finding white settlements therein, the experiment was eminently successful in procuring these two gentlemen.

A band of Pawnees had visited the settlements upon the Elkhorn, robbing, stealing, killing cattle, and filling the neighborhood with alarm. They were repulsed by the settlers, with a loss of five or six of their number killed. They fled and were pursued by a company, of which Kettle was a member and Thayer an officer, (p. 16, ans. 7.) This company hung upon their trail, without deviation, (ib.,) until they were overtaken and punished.⁴⁸

Whoever supposes that a band of fugitive Pawnees, fleeing before the face of the white man, conscious of deserving the punishment they know they will receive if overtaken, will nevertheless lead their pursuers into the midst of white settlements, knows little of the character or sagacity of the Indian of the plains.

Thayer visited the county between the 6th and 12th of July last, (answer 3, p. 15;) struck the county near the southeastern portion of it, and proceeded in a northwesterly direction nearly through its centre, (answer 6, p. 15; answers 24 and 25, p. 18;) saw no roads, and travelled the Indian trail all the way, (answer 7, p. 16;) travelled about ten or fifteen miles in Cuming county, (answer 28, p. 18;) river runs southeasterly through Izard, and he followed the river all the way, (answers 34 and 35, p. 18.) Now, upon an inspection of the plat furnished by the land office, upon which the course of the Elkhorn is traced through Cuming and Izard counties, showing accurately its crossing of even quarter-section lines, it is found that this redoubtable general must have travelled near twenty miles in Cuming county had he gone straight "as the crow flies;" but following the tortuous windings of the stream, as he must

necessarily have done, the distance was full thirty; that while he travelled in a northwesterly direction, supposing himself in Izard, he was in Cuming; that instead of entering Izard near the southeast corner, his entrance was near the northeast; that instead of travelling through it from corner to corner in a northwesterly direction, he passed considerably north of its centre, and in a direction south of westerly. However little a traveller upon the plains may know of artificial lines, of one thing he may be tolerably certain, and that is the general direction of his journey. He watches the sun eagerly in its rising, at its zenith, and its going down. He makes it his companion, and regulates his movements by it. General Thayer was not mistaken in the direction he travelled; but his error was in supposing himself in Izard while he was yet in Cuming[.] And yet you are asked to infer that, because he saw no inhabitants in that part of his journey, there were none in the county. Will you follow these premises to the conclusion proposed, and reject the return from Cuming, where it is reported the contestant received a majority; or will you treat the testimony as it deserves—reject it wholly from your consideration?

As Kettles' testimony is essentially the same as Thayer's the reasoning in one case will apply to both. I forbear to comment on what these witnesses "don't know," or what they say "folks said." "Folks" are very good witnesses when brought by the proper process before the proper officer and examined and cross-examined in the usual manner; but when detailed to us second-hand such testimony becomes rapid and worthless in the extreme. I will only remark, that while all whose names are mentioned in connexion with this county, whether as party, witness, or lawyer, seem involved in one general oblivion as to its population, as well as its area, boundaries, or creation, if inquiry had been set on foot as to the settlements on "Pebble creek" and "Maple creek," both of which run through the southern portion of this county, the whereabouts of a large and respectable population could have been ascertained. "Ordinary maps in circulation" (question 17, p. 13) are made the chief basis of the statements of the witnesses concerning this county. If authentic maps be referred to, it will appear that upon one of these streams in that county is the town of "Oak Dale," a name

suggestive of a characteristic feature of the country that would of itself attract a population. Is it not strange, while the contestant has seen fit to resort to this vague and extraordinary testimony to substantiate a charge of fraud as susceptible of specific proof as any that could be made, that in this county, as in Calhoun, those portions which by the maps appear to be the only populated parts should be the precise regions to which no inquiry whatever is directed?

L'Eau Qui Court county.

The charge in regard to this county is in these words: "That although no more than thirty votes or thereabouts were given in the county of L'Eau Qui Court by persons entitled to vote therein, no less than one hundred and twenty-eight votes were thence fraudulently returned and counted for you in the final canvass."

Here it is conceded that the county was duly organized, the election duly held, and legal votes duly cast, but the number returned was greater than the number cast. To substantiate this charge, Taffe, Coit, and James, are introduced. Taffe is introduced not to testify to any specific act affecting the election, but is set to guessing. After passing the mere formal part of his deposition and coming to the substantial portion of it, the following qualifying words appear, to wit:

Answer 6. "I have a general acquaintance and general knowledge," &c.

Answer 7. "I should think," &c.

Answer 8. "I have some acquaintance," "and believe," &c.

Answer 9. "I think," &c.

Answer 10. "I think," &c.

Answer 11. "There would probably," &c.; "the probabilities are," &c.

Answer 12. "I should think," &c.

Answer 13. "I believe the votes were less," &c.

And then, after the cross-examination is closed, the direct examination is resumed in one sweeping, all-pervading interrogatory, as follows, (page 46:)

"State, if you please, with what degree of certainty you express your belief that there could not have been at most more than thirty-five voters in the county of L'Eau Qui Court at the last election."

To which he answers:

"From my knowledge, in ordinary conversation, I would say so without qualification."

There, nothing can be clearer; now turn back to question 2, and learn that this was a member of the Nebraska legislature, and go your way and doubt no more.

When it is seen in the cross-examination that this witness had been but once in the county, (answer 1, p. 46;) that he did not know where the county line was, where he must have entered it, (answer 3, p. 46;) that the west line of the county is indefinite, (answer 4, p. 46;) that he did not know precisely where the south line of the county was, (answer 5, p. 46.)

I think it will have to be admitted that this is the most brilliant piece of guessing that has ever been recorded since Faust invented letters.

In answer to the last cross-interrogatory, Mr. Taffe (or "Taffy," as Mr. Thom[p]son calls him,) says he came from the south of Illinois. I think it was in that State where, a few years ago, they used to weigh their hogs by balancing a plank across the fence, putting the hog on one end, piling stones on the other, and guessing at the weight of the stones. It is there, doubtless, whence this witness derives his faculty. He has guessed the vote in this county down to 35. Does any one doubt if 35 votes would just make a tie, and 34 would be necessary to save his friend, that so magnificent a guesser could not just as well have fixed it there?

Mr. Thom[p]son, at the conclusion of his very able argument, exhibits a sort of India-rubber machine, beautifully elastic, and shows you how it may expand so as to embrace 148 majority for the contestant, and then contract gracefully through various gradations down to 55. Such testimony as the above is indispensable in working those machines.

Graff's testimony.

To rebut the testimony of Taffe, Dr. Graff, who happened to be present by accident, was called to the stand by agreement. He is able to give the boundaries of the county, (answer 5, p. 101;) says that over 80 votes were polled there the previous year;⁴⁰ that he knew of considerable emigration to the county last summer; that he saw fifteen

wagons going to it at one time, and that, without seeing all the points, he made up his mind they could poll over 100 votes, (answer 14, pp. 102, 103,) and that while he was there (forty-eight hours) he saw and conversed with forty men, voters, (answer 14, p. 105,) and knew a number whom he did not see, voters in the county, (p. 105, answers 15, 16, 17.)

A useful lesson may be learned by this deposition as to how the contestant's counsel construes the law of testimony. No leading questions, (answer 11, p. 102,) no opinion of the number of voters in the county, (answer 14, p. 102,) no leading and multifarious questions, (answer 15, p. 103,) were allowed to be put without (very properly, I think) interposing his objection. Let the rule be applied to both sides is all I ask. I forgot to call attention to the fact that Dr. Graff's position (register of the land office) gave him peculiar facilities for judging the population of that county.

Coit (p. 27) and James (p. 34.)

From the manner in which these two gentlemen are referred to in the argument of Mr. Thom[p]son, (pp. 10, 11,) it is evident that no reliance is placed upon their testimony. It is difficult to determine why these depositions were sent here except as "make-weights." If the purpose was to prove by them the reasons why the contestant was unable to prove anything, they may have made out a *prima facie* case. These gentlemen were part of the smelling committee who were put on the *scent* of frauds. It was their duty, among other things, to get the poll-lists of L'Eau Qui Court, as it was that of Rogers in Platte, (answer 1, p. 21,) and Wattles in Buffalo, (answer 2, p. 54;) not to be used in evidence—it would be an impeachment of the professional ability of the able counsel engaged in the preparation of the case to suppose such a thing—but as a private memorandum, (answer 4, p. 24, answer 40, pp. 58, 59;) and it was because this list was flouted in their faces, and the taunt was thrown out that it was to become the foundation for an application for process to take them to Omaha, two hundred miles, in dead of winter, that the inhabitants of L'Eau Qui Court county became exasperated. The idea of making them evidence was an afterthought. It was not until after cold weather came on, the "sinews of war" were

exhausted, and this *House was organized*, that it was thought best to lay them before the House, and "take the chances." The sequel will show to what purposes the House may be put.

Genoa.

This is an old voting precinct; when the Pawnee reservation was surveyed last summer the lines were made to embrace this town, or at least a portion of it.⁵⁰ This, of itself, was an act of gross injustice and it would be a matter of sincere regret if, in addition to this wrong, it should be found necessary to inflict upon them another, that of disfranchisement, as proposed by the contestant. Happily no such necessity exists. It is only such of the Indian lands as are excluded "*by treaty*," which shall constitute no part of the Territory of Nebraska. This provision was made to apply to a few cases in Kansas, where the treaty stipulations bring them within the purview of this provision. While the same phraseology was used in both the Kansas and Nebraska acts, yet there is no case in Nebraska to which it applies. This is but another instance where the counsel has mistaken the law.

Hall county.

The only frauds explicitly shown in the whole case were those in regard to this county. John McConihe says he first saw them in a lager beer saloon, (6, p. 50;) were made out in that saloon, (7, p. 50;) saw them making out returns in the saloon, (answer 9, p. 50.) He identifies the return as the same counted in the canvass, (answer 11, p. 51.) It was corrected for Daily by the board of canvassers, (answer 12, p. 51.) He believes the returns were an entire new paper, made in that saloon, (answer 6, p. 52.) He advised them to make return of the votes cast for Estabrook, and their reasons for throwing out the same, (answer 7, p. 52.) He thinks there was a willingness to throw out the Estabrook vote on a mere technicality when they counted all the Daily votes, subject to the same technicality.—(Answer 10, p. 52.)

An effort is made to explain this transaction by Mr. Wallenburg, (p. 71.) His testimony, however, only confirms, if not the fraudulent, at least the illegal character of the transaction. It is evident from the testimony of

both witnesses that the returns of the whole county, comprising two precincts, were brought by the person claiming to be the clerk on two pieces of paper; that a large vote for me was revealed by them, which was carefully suppressed in the prepared returns, and that the two papers were altered and pasted together and words added after they were so altered. If it had been left in such a condition as that you could have told what number of votes both parties received, so that you could have added those to the list which were rejected for mere informality, I would not ask you to suppress this vote, for I hold that no omission of duty on the part of those conducting the election should work the disfranchisement of the citizen. But in this instance it is carefully prepared, against advice which they voluntarily sought, so as not to reveal my vote in the county. The vote in this county, amounting to 24 majority for the contestant, must therefore be deducted from his aggregate.

There is no prima facie case.

It is contended in the argument that a *prima facie* case is made, and not rebutted.

In the first place something more than a *prima facie* case should be made. The expulsion of a member and the disfranchisement of a community are results too grave to be demanded upon a *prima facie* showing. This is a *trial*, not an examination for probable cause. The law presuming regularity, the possession of the certificate makes a *prima facie* case for me, and this must be overcome by a preponderance of testimony.

In the next place a *prima facie* case is not made by the contestant. The notice of the closing of the testimony on the part of the contestant was served on my attorney on the 6th of January. Whatever may be thought of the regularity of the introduction subsequently of several papers claimed to be records, it is not pretended that I had notice, or that they were brought into the case under such circumstances as would enable me to rebut, counteract, or explain them. If I have offered no testimony to rebut these, therefore, the failure to do so certainly cannot carry any presumption against me. What, then, is the case as it stood on that day?

Abstract.

No testimony had been offered to show the number of votes cast, or the majority to overcome.

Buffalo county.

Governor Black had testified that while his commissions were not deemed essential, he had given them (as it was supposed their authority would be the more respected in consequence) to such persons as seemed to have been chosen by the electors of that county. "The papers were returned to me, purporting to set forth the choice of officers by the electors of Buffalo county."—(Ans. 2, p. 60.) "I took no action," &c., "until after the county officers were chosen by the people."—(Ans. 33, p. 67.) *Prima facie*, then, the organization was sufficiently regular to suit the most fastidious. The only thing claimed to throw doubt upon this regularity is the paper found on page 94, not then introduced, and found for the first time by me here along with the printed testimony.

Kearny City.

Wattles had testified, but knew nothing of the election save what was told him, and what he learned by the exhibits marked E, F, and G; that marked "G," relating to Fort Kearny, was found by him in Buffalo county, and he helped to copy it, but he knew nothing of the correctness of the original, nor was he questioned as to it. He used this exhibit especially as his *private* memorandum, making a great variety of annotations upon it. It was introduced to show Kearny City *out* of Buffalo county, while the certificate states that it was *in* that county.—(Page 91.) Is here a *prima facie* case?

Calhoun county.

The charge as to this county is that no election was held in it, and the testimony to support it was that of Kettle, Rogers, and Hindman, who stated at what places they had visited the county, and where they had held conversation with the inhabitants; but on an exhibition of the law organizing it, referred to and relied on by contestant, and the authentic map of the country, it is found that the witnesses were not in the county at all, and did not know the boundaries, location, or area of that county. Is this a *prima facie* case? It is submitted, moreover, that such testimony could, in no event, be received to support such a charge.

Izard county.

The charge here is the same as in Calhoun, and the witnesses are Neligh, Thayer, and Wattles. Neligh was in the county once, at the extreme northeast corner, north of a large river, and a year and a half before the election. Thayer and Wattles chased a band of fugitive Pawnees, fleeing from the face of white men, following the Elkhorne, and supposed themselves in Izard. They say that after travelling ten or fifteen miles in Cuming they entered Izard near the southeast corner, going transversely through, and going out near the northwest corner; that they never ran through it in a southeast direction. The map from the official township plats shows that they travelled near thirty miles in Cuming, while they supposed themselves in Izard; that they entered Izard near the northeast instead of the southeast corner; that they went southwesterly, instead of northwesterly, through it. If such testimony could prove anything, it would prove Cuming destitute of population, and in Cuming the contestant is claimed to have a majority. The charge is one of gross fraud. The evidence to prove it is that of men who made a flying visit through it, at some point, they knew not where, with no other purpose than to overtake and punish a band of marauding Indians. To dignify this testimony into *prima facie* evidence of such a charge would be a grosser outrage on law, justice, and the rights of parties than this committee or House are capable of perpetrating.

L'Eau Qui Court county.

Every presumption claimed to have been raised here was rebutted by G. B. Graff, who was examined on my part by consent. Moreover, evidence so vague to prove a specific charge of fraud can never be admitted before any tribunal.

Genoa.

The proposal here is to disfranchise an old settlement, for the reason that the town had just then been embraced in a survey of an Indian reservation. Happily, the law forbids the damaging *thought* even. No rebutting was required.

Hall county.

The only specific act of determined illegality, not to say

fraud, revealed in this case, was proven in regard to this county, where twenty-four majority was counted for the contestant. The testimony was that of the contestant, and the more he attempted to explain the more palpable the wrong became. When the contestant had made his case, therefore, I had a right, as I still have, to demand that this vote should be excluded, and my majority increased that amount.

In conclusion, I would call the attention of the committee and House of Representatives to the body of the argument and synopsis of the testimony, where all the points are fully discussed.

E. ESTABROOK.

NEBRASKA CONTESTED ELECTION.

MEMORIAL

OF THE

HON. EXPERIENCE ESTABROOK

ASKING

Time to take testimony in the Nebraska contested election case.

To the honorable House of Representatives of the Congress of the United States:

Your memorialist, Experience Estabrook, would respectfully state that he is the delegate elect from the Territory of Nebraska to the thirty-sixth Congress; that Samuel G. Daily, esq., was a candidate for the same office, but on the 11th day of October last the election resulted in favor of your memorialist; that on the 12th day of November, about the time of leaving to take his seat as delegate, said Daily notified your memorialist that he should contest said election, and on the 16th day of November he commenced taking depositions for that purpose, your memorialist, being in Washington, having left the matter of contest entirely in charge of counsel. On the 3d day of January the last witness on the part of Mr. Daily was examined, and on the 6th day of the same month the following notice was served upon my counsel by the counsel for contestant:

In the matter of the contested election of Experience Estabrook as delegate from the Territory of Nebraska to the thirty-sixth Congress, Samuel G. Daily contestant.

January 6, 1860.

SIR: In accordance with my promise I lose no time in apprising you of the decision of the counsel for Mr. Daily to proceed no further for the present with the examination of witnesses in his behalf in pursuance of the notice heretofore given. Whether any further testimony shall be taken in his behalf is a question reserved for after consideration. You will, of course, understand that his right to do it without qualification is not intended to be hereby waived or impaired. Should it be deemed necessary to exercise it a new notice to that effect will, of course, be given. The particular object of this communication, as you are aware, is to afford an opportunity to you to take evidence on your part without obstruction from us.

Yours, respectfully, ALFRED CONKLING,
Attorney for contestant.

J. S. Kinney, Esq.,
Attorney for Estabrook.

When this notice was served the contestant had not introduced *any testimony tending* to show the number of votes *polled*, or the *majority* your memorialist received over the vote given for Mr. Daily, and I was written to immediately by my counsel that, as the testimony was closed on the part of the contestant, omitting *this* proof, without which the contestant *must* fail, that it was entirely unnecessary to take any testimony on the part of your memorialist. Accordingly, relying upon this fatal defect, and the fact that *no additional notice* was served to supply the omission, the counsel of memorialist did not take any testimony, save that of one witness, examined by consent long prior to the time the case was closed by the contestant. When the *notice* was served there was no necessity for rebutting any presumption which might arise in favor of Mr. Daily. There could not be any purgation of votes so as to prejudice the right of memorialist to hold his seat, as the official majority had not been established. The case

remained in this condition, so far as your memorialist or his council [counsel] had any knowledge, until the testimony transmitted by the magistrate was opened by the clerk of your honorable body at the expiration of the sixty days, (after which no testimony can be taken except by order of the House,) and to the utter astonishment of your memorialist and his council [counsel], it was found that the important omission referred to was supplied by a certified copy of a certain "abstract," and that other documentary matter, treated by the committee as evidence, had been interpolated into the record, injurious to the rights of your memorialist. Your memorialist would particularly refer to that which purports to have been the proceedings of a public meeting in Buffalo county, p. 74 of the testimony; and the letter of Gov. Black, p. 95, and the certified copy of abstract, p. 98, all made to occupy a prominent place as evidence in the report of the committee, and without which no report could have been made against your memorialist, and which neither your memorialist nor his council [counsel] had ever seen, or had an opportunity to attack, disprove, or impeach, believing, under the notice that the testimony was closed, that nothing intended as evidence would be introduced without first giving the "new notice" promised. Hence, on appearing before the committee your memorialist was taken entirely by surprise; but, trusting that matter introduced under such circumstances would not be regarded by the committee as evidence, he went to a hearing without asking for time to explain it, and impeach the presumptions raised by the entire evidence.

Your memorialist, therefore, would ask for a reasonable time to take testimony, and would adduce as reasons—

First. That he did not introduce witnesses, because, as the case stood when the notice referred to was served, it was unnecessary.

Second. The evidence adduced afterwards was without notice, and in the absence of such evidence the committee could not have done otherwise than report in favor of memorialist.

Third. Memorialist would have taken testimony, and could have explained and overthrown the supposed *prima facie* case made by contestant, if his counsel had not im-

PLICITLY relied upon the notice that no more testimony would be taken, &c.

Fourth. If time is given, he will prove that in Gage county, where a majority of forty-two was counted for Daily, there was no organization according to law, and that after the election the legislature passed an act legalizing the organization; and the same reason exists for throwing out this vote as influenced the committee in excluding Buffalo county.

Fifth. Your memorialist will also prove beyond cavil, that the vote of Buffalo county, as counted by the canvassers, including Kearny City precinct, did not exceed the actual legal votes in that county on the 11th day of October last; and that the voters in Kearny City precinct were legally such, and should not be disfranchised.

Sixth. That he has been informed and believes that there were and are settlers in Izard and Calhoun counties, and that he can establish the regularity of the election in those counties by competent testimony.

Seventh. That he will prove that the election in l'Eau qui Court county was conducted according to law, and that the persons whose names appear as voters were actual residents and entitled to vote at said election. From these counties the committee have deducted from the vote of your memorialist four hundred and eight ballots, by which they elect Mr. Daily; and, if time is given for taking testimony, will be by the same committee reinstated and placed again to the credit of your memorialist.

Eighth. Your memorialist will also prove that a large number of fraudulent votes were cast and counted for Mr. Daily in Nemaha, Richardson, Otoe, Douglas, Cass, Cedar, and other counties, and that there was gross fraud and illegality in making up the returns in Nemaha county, by which Mr. Daily received a large number of illegal votes in the final count.

All of which was charged in the answer to the notice of contest, and could and would have been proven, had it not been for the fact of the important omission in the contestant's testimony, before referred to, and the notice that no more testimony would be taken, &c.

In view of these facts, under the peculiar circumstances of this case and to the end that justice may be done to your memorialist, he would respectfully pray your

honorable body for such reasonable time as may be necessary to explain the evidence taken by Mr. Daily, to confirm the vote counted for memorialist, and to bring to light the frauds perpetrated upon the ballot box by the other side, by which the vote of contestant was largely increased.

E. ESTABROOK.

Richard Wigginton Thompson, a prominent politician, of Indiana, and secretary of the navy in the administration of President Hayes, summed up the case for Daily, but it is omitted, inasmuch as the report of the friendly partisan committee on elections, which follows, covers the same ground.

REPORTS OF COMMITTEES

36th Congress, 1st Session. }	HOUSE OF REPRESENTATIVES.	{ Report No. 446.
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April 20, 1860.—Laid upon the table, and ordered to be printed.

Mr. Campbell, from the Committee on Elections, submitted the following

REPORT.

The Committee on Elections, to whom was referred the memorial of Samuel G. Daily, contesting the right of Experience Estabrook, the sitting delegate, to a seat in the 36th Congress, as the delegate representing the Territory of Nebraska, beg leave to submit the following report:

The election out of which this contest has arisen took place on the 14th [11th] day of October, 1859. The returns filed in the office of the secretary of the Territory—where, by law, they were required to be filed—show that 3,100 votes were counted for Mr. Estabrook and 2,800 for Mr. Daily. The former having, by this count, a majority of 300, the governor of the Territory issued to him the certificate of election, by virtue of which he is now the sitting delegate.

The committee find, however, from an examination of the evidence before them, that in order to make for Mr.

Estabrook the aggregate of 3,100 votes, there has been counted for him 292 votes as polled in the county of Buffalo, 28 votes as polled in the county of Calhoun, 21 votes as polled in the county of Izard, 20 votes as polled at the precinct of Genoa, in the county of Monroe, and, according to their estimate, 68 votes as polled in the county of L'Eau Qui Court, all of which are illegal. And they will proceed to state the reasons which have brought them to this conclusion.

1. As to the votes from Buffalo county :

By an act passed by the legislature of Nebraska Territory March 14, 1855, provision was made for the organization of this county. This is its language: "That all that portion of territory included in the following limits is hereby declared organized into a county, to be called Buffalo: Commencing at a point in the centre of the Platte river, ten miles east from the mouth of Wood river, running thence westward up the southern channel of the Platte to the mouth of Buffalo creek; thence north thirty miles; thence east to a point directly north of the place of beginning; thence south to the place of beginning. The seat of justice is hereby located at Nebraska Centre."

No steps were taken, under the laws of the Territory, for the organization of this county by the election of officers; and it is the opinion of the committee that without such election there could be no organization. The act of the legislature does not organize a county; it merely provides for and authorizes an organization—that is, it authorizes an election to be held for county officers, under the general law regulating elections. If no such election is held, the county, notwithstanding the act of the legislature, cannot exercise any of the powers of an organized county, and cannot legally vote either for territorial officers or delegate to Congress.

The legislature of the Territory of Nebraska has provided by an act "in relation to new counties:" "That whenever the citizens of any *unorganized* county desire to have the same *organized*, they may make application by petition, in writing, signed by a majority of the legal voters of said county, to the judge of probate of the county to which such unorganized county is attached, whereupon said judge of probate shall order *an election for county officers* in such unorganized county." It then provides for a notice of the

election, and a return of the votes "to the organized county," the execution of the necessary bonds by the officers elected, and the entire mode of consummating the organization. And it further provides that until this is done "all unorganized counties shall be attached to the nearest organized county directly *east* of them for election, judicial, and revenue purposes."⁵¹

The committee do not suppose that the legislature intended to dispense with this mode of organization by the simple use of the word "*organize*" in the act creating a county. To suppose that they did would be to assume that they designed to prevent an election by the people of the necessary county officers. They know of no possible mode of legally organizing a county except by the election of officers by the people—a rule which must meet with universal assent under a popular form of government.

It is not pretended that Buffalo county was attached "to the nearest organized county directly east of" it for election purposes, for the vote is reported from Buffalo county directly; and hence, the only question to be inquired into is, whether or not it was so organized as that a vote could be legally polled within it?

It appears from the evidence that in May preceding the election the governor of the Territory was solicited "to *appoint* the county officers for Buffalo county," but that finding himself possessed of "no such power," he declined to do it. The governor was clearly right in this determination. He had no power to appoint officers; not even to fill a vacancy. He had once possessed this latter power, but the legislature had taken it away, and had provided that the vacancies should be only filled by election. But he was as clearly wrong in the other conclusion to which he came. He says that he considered "that Buffalo county was *fully organized* by the act of the territorial legislature." How it was organized *without officers*, he does not say, and the committee have already stated that, in their opinion, such a thing is impossible. But, acting upon this strange assumption, he says he advised the course which he considered necessary to be taken. This was, that application should be made to the county commissioners of the nearest county on the east to have the initiatory steps taken for the election of county officers. It is not material to inquire whether he was right or wrong in this, because it

does not appear that any such steps were ever taken. On the contrary, it is in proof that a few persons met together, without any notice, and, after the manner of a public meeting for political or other purposes, elected a president and secretary, and, upon *mere motion and vote*, chose all the county officers. The proceedings of the meeting were signed by the president and secretary, and forwarded to the governor; who, upon the strength of it, commissioned the officers so chosen, although there is no law authorizing him to issue commissions to county officers. And these are the officers who must have conducted the pretended election in Buffalo county, and who returned the 292 votes sent from that county for the sitting delegate. The committee consider the whole of these proceedings irregular and void in law.

The committee cannot omit further comment upon this extraordinary proceeding; for, to your committee, extraordinary it seems, in every sense of the term. The meeting was held on the 25th of June, 1852, at the place designated in the act of the legislature as the county seat, and where, according to the proof, there is "*one dwelling-house, one storehouse, one barn or stable, and one warehouse,*" and where but "*three persons*" constituted the population. The object of the meeting was avowed to be the "*recommending* suitable persons to fill the several offices of Buffalo county." And this object was carried out by the simple adoption of the several *motions* put to the meeting. For example: Mr. Charles A. Henry moved that Henry Peck be chosen probate judge, Charles T. Lutz sheriff, Joseph Huff commissioner of one of the precincts, Patrick Care justice of the peace, and John Evans constable, and they were all so chosen by the adoption of the motion. And so of all the rest. And then it was resolved "that Dr. Henry, with men living in the eastern precinct, do have them *recommend* suitable persons to fill the offices of justice of the peace and constable" in a precinct not supplied with officers at this meeting. And the whole proceedings closed with a resolution to the effect that the meeting "*recommend*" the above-named gentlemen to hold the several offices to which they have been *nominated* by this meeting, and request the governor of this Territory to *commission* them for said offices."

It will be seen that this meeting merely "*nominated*"

these officers, and *recommended* them to be *commissioned* by the governor; or, in other words, that it designed that the governor should *appoint* them. It has been already stated that the governor had no such power—that he could have nothing to do with the selection or commissioning of officers. Yet, notwithstanding this want of power, he did both *appoint* and *commission* the persons recommended and nominated by this meeting, and several others who were not recommended. It needs no argument to prove that no authority to hold an election or to transact any county business was conferred upon these persons by his act, and that all their proceedings are absolutely void. It is of no consequence to inquire what power he considered himself as possessing, since the fact that he did *appoint* them appears in proof. In a letter dated July 26, 1859, and written from the "executive chamber," to one of the persons nominated to him, he says: "I have this day *appointed* the following officers," &c., going on to enumerate those who were nominated by the meeting. All these proceedings were in clear violation of law.

The foregoing facts in relation to the pretended organization of Buffalo county being made by the contestant, and the sitting delegate having offered no evidence of any other organization, it is necessarily to be inferred that there was no other; since, if there had been, he would have had no difficulty in showing it. Indeed, he has left it to be inferred from his mode of cross-examining the governor, whose testimony has been taken, that he did not rely upon any organization, but upon the legality of that made by the governor. The committee, therefore, conclude that there was no other, and have no difficulty in deciding that to be clearly in violation of law.

The 292 votes which were returned from Buffalo county were, therefore, illegally counted by the canvassers for the sitting delegate, and should be deducted from his poll.

It is apparent to the committee, from the proof in the case, that the parties who perpetrated this fraud were well aware of it. Of the 292 votes returned and counted from Buffalo county, 238 of them were reported as having been polled at a place called "*Kearny City*" and the certificate accompanying the returns state[s] that this place is "*in the county of Buffalo.*" This is not correct by the act laying out the county, as already quoted; the *south* boundary

is the Platte river, so that no part of it extends south of that river. Yet it is in proof that "Kearny City" lies on the *south* side of the Platte! A fact which must have been known to all the persons engaged in perpetrating this fraud. Such men would have no difficulty in contriving to furnish a list of votes for the whole county as easily as those furnished for this place, and doubtless did the entire work from the same motive.

It is scarcely possible that Buffalo county could have furnished so large a vote as 292; to have done so it must have been the sixth county, in point of population, in the Territory, and must have contained at least 1,500 inhabitants. The proof is, that there are "not over eight houses," and not "exceeding fifteen residents," and not "one acre of cultivated land or a farm-house," at or in the neighborhood of Kearny City; that at Nebraska Centre, the place named in the act as the county seat, there is only "one dwelling-house, one storehouse, one barn or stable, and one warehouse," one farm in cultivation, and one or two near by opening for cultivation; and at Centralia there was but a single individual. The sitting delegate does not offer to show any other settlements than these, and the committee are left no other alternative but to conclude that there are no others; if there had been it was his duty, after this proof made by the contestant, to have shown it. Hence, the whole of this vote of Buffalo county must be set aside as illegal and fraudulent in the opinion of the committee.

II. As to the votes from Calhoun county:

It is not pretended that Calhoun was an organized county, within the meaning of the statute. The act defining its boundaries is entitled "an act to *establish* new counties, &c.," and it was, therefore, in the same condition precisely as Buffalo county; that is, the act authorized such steps to be taken, without additional legislation, as were necessary to its organization. Like Buffalo, it could have been organized by the proper application to the county commissioners or probate judge (no matter which) of the nearest county on the east. But nothing of this kind was done. On the contrary, it was attached to the county of Platte for election purposes, and constituted a voting precinct of that county; and as such voting precinct it was the duty of those who had charge of the election there to return the poll-books to the clerk of Platte county, whose

duty it was, by law, to send an abstract of them to the governor. But this was not done. Instead of doing it they sent the returns directly to the governor, and they were taken out of the post office by his private secretary, who opened and examined them, and then sent them himself to the clerk of Platte county, with directions to return them with the Platte county returns. This was manifestly a violation of law. The law of the Territory, as also of all the States, has pointed out a particular mode of making election returns, and has designated particular officers who shall open and inspect them. If they are opened and inspected by any others they are thereby vitiated; for if such a practice were tolerated innumerable frauds might be perpetrated, and the popular will defeated. By the law of Nebraska Territory the votes polled in Calhoun county could not be properly opened by any other persons than the probate judge and three disinterested householders of Platte county. Yet it is in proof that they were opened by the private secretary of the governor, and it is not proven or pretended that the probate judge, or any three householders of Platte county, ever saw them. On the contrary, it is proven that they were sent by the private secretary of the governor to the clerk of Platte county, and by him sent back to the governor. The clerk must have opened them himself; this is the necessary inference.

In the opinion of the committee, therefore, this violation of law vitiates the whole of the returns from Calhoun county. And the committee think that, for another reason, they should be set aside as fraudulent.

The contestant has proven by competent witnesses that the entire settlements in this county consisted of *two* families in the northwestern part, and *four* families in the southeastern part of the county, and that the whole voting population of the county does not exceed *six*! Yet there are 32 votes returned; 28 for the sitting delegate, and 4 for the contestant. One witness who has resided in the county swears that he does not know of a voting precinct in the county, or of an election being held. Another swears that he saw the returns in the clerk's office of Platte county, where they were sent by the private secretary of the governor; that he took from them the names of the persons who were represented as having conducted the election, and when these names were shown to the witness who had

resided in that county, the latter swore that he *never heard of such persons!* From the whole of the evidence on this point, the committee conclude that these returns were *forged* by some person; and they are supported in this conclusion by the fact that the clerk of Platte county has certified, since this contest began, that they "have been *abstracted*" from his office—a fact which goes to show that somebody had a motive for their concealment or destruction.

The committee think that as such proof as this has been made by the contestant, it was incumbent on the sitting delegate to show such facts as would rebut it, so as to set the matter right if it amounted to a misrepresentation. His not having done so ripens the presumptions they necessarily excite into convictions, and leaves the committee no other alternative than to conclude that the whole vote of Calhoun county is fraudulent, and should not have been counted.

The committee, in this view of the vote from Calhoun county, assumed it to be true, as sworn to by the private secretary of the governor, that this county is attached for election purposes to the county of Platte. But this is denied by the sitting delegate, who insists that it is not so attached, and it is in proof that the clerk of Platte county could find no record of a Calhoun county voting precinct in his office. This view of the matter leaves no doubt about the fraudulent character of the vote; for, if the county was not a voting precinct of Platte, it was evidently not organized, and could not legally vote at all. And besides, sending the return to the clerk of Platte by the private secretary of the governor, and its being opened by him, would vitiate it, as has already been shown.

III. As to the vote from Izard county:

The committee cannot avoid the conviction that the whole vote returned from this county is fraudulent. The vote returned and counted was 24, of which 21 were for the sitting delegate and 3 for the contestant. One witness, who resides on the main travelled road leading to this county, swears that he "never saw a settler of Izard county going to or returning from that county, or heard of one." Another, who visited the county last July, swears that he saw no evidence of settlement, no roads, nor any person who appeared to reside there; and that in travelling through

the county he neither saw nor met any person. And a third swears that he has no knowledge of any settlements in the county, and has the opportunity of knowing if there were any. He says he has no doubt there are none at all.

This the committee consider to be competent proof. The nonsettlement of a county could be proved in no way; and being competent, it so establishes the fact of their being no inhabitants in Izard county as to make it conclusive, inasmuch as the sitting delegate has offered no proof to the contrary. His not doing so leaves the inference a necessary and inevitable one, that the county was wholly without population. And having no population it could not have been an organized county, and consequently no election could have been legally held there. The votes reported from there are therefore fraudulent, and should have been rejected by the canvassers.

IV. As to the votes from the precinct of Genoa, in the county of Monroe:

It is conceded that this precinct is "in the reservation of the Pawnee Indians," set apart for their occupancy by the United States. By the act of Congress organizing the Territory it is provided that the territory occupied as an *Indian reservation* shall not be considered a *part of Nebraska Territory*, but that all such territory shall be excepted out of the boundaries until, by arrangement between the United States and the Indians, the title of the latter shall be extinguished. No such arrangement as this having been made between the United States and the Pawnee Indians as to this reserve, it was no part of the Territory, and hence there could be no voting precinct legally established within it. The votes returned from there were therefore illegal and fraudulent, and should be rejected.

V. As to the votes from L'Eau Qui Court county:

The entire vote of this county was counted for the sitting delegate, it being 128 votes. A gentleman who represented the county in the legislature of the Territory swears that there are only from thirty to thirty-five votes in the county; and the witness swears that there are but two settlements in it, and that it is generally unsettled. The *only* witness whose testimony has been taken by the sitting delegate makes a statement to some extent contradictory of these, and speaks of five settlements in different parts of the county. At one of these he says there is only "a single

family;" at another, "probably half a dozen voters;" at another, "three dwellings, and *may be more*;" at another, "one house;" and at the last, the county seat, "about twenty or twenty-five houses." He speaks also of having seen some emigrants going to two other portions of the county, but does not say whether or not they settled there; and he also says that the year before the county polled eighty votes. The committee conclude, from all the evidence, that there cannot be over sixty votes in the county, and that all the vote above that number is fraudulent; that is, that sixty-eight votes should be deducted from the number counted for the sitting delegate.

The fraud in this county is abundantly proven. Two of the witnesses visited the county after the election to procure a copy of the poll-book. They succeeded in obtaining it from the clerk, but it was taken away from them by a mob and destroyed before they could get out of the county, those who composed the mob declaring that they were parties to the fraud, and were resolved not to be exposed. The original poll-books were afterwards *stolen* from the clerk's office, and, doubtless, were also destroyed by the same men; but the witnesses saw enough of them to swear that they contained the names of Howell Cobb, Aaron V. Brown, "ten names of McRea in consecutive order," and several others whom they knew to be non-residents of the county.

This proof of the contents of this poll-book is entirely competent, since the loss of the original is shown, and shows such fraud as ought not to go unpunished by the proper territorial authorities. The committee, in view of them, are satisfied that they have made a liberal allowance for the vote of the county.

The committee deem it due to the sitting delegate to state their opinion upon the main preliminary points made by him.

He insists first: That under the act of February 19, 1851, but one notice of contest could be served by contestant upon the sitting delegate, and that, having served that *one* notice, the power under the act, is exhausted; and whether sufficient or not, the contestant must abide by it.

Your committee entirely dissent from this position. In their view more than one notice may be served under the act of 1851, provided they shall be served within the time required by that act; and they may be treated as one no-

tice, or as supplemental notices, or the contestant may, with notice to the opposite party, withdraw an insufficient notice and serve a sufficient notice in the place thereof. All the act of 1851 contemplates is fair notice of the subject-matter of contest within the time specified by the act itself. As the sitting delegate has had such notice, in the opinion of the committee, he has no ground for complaint.

Second. That there is no competent proof showing the result of the election.

The committee think otherwise. The proof upon this point consists of a copy of the abstract showing the result, as ascertained by the governor and the other canvassers, and filed by the governor in the office of the secretary of the Territory. The law of the Territory makes it the duty of these canvassers to count the votes and ascertain the result of the election. This must necessarily consist of the putting together of the several returns, summing them up, and thus ascertaining the result. When the result is thus ascertained, the governor is required to issue a certificate of election to the person having the highest number of votes. He, of course, files away the result or abstract amongst the executive records as the evidence upon which his certificate is based. The returns of the clerks of the several counties would not be such evidence, wheresoever filed, for they show no result. They are mere abstracts of the poll-books returned from the precincts, and are sent to the governor that one general and final abstract may be made, showing the aggregate of votes and the result; and this final abstract is, from its very nature, a public record belonging to the executive department.

The act for the organization of Nebraska provides that the secretary of the Territory shall preserve all the acts and proceedings of the governor which pertain to his executive duties. He is, therefore, made the custodian of this abstract, and as the original must remain where it is, it is competent to prove its contents by a certified copy. That is done in this case, and the committee think it is the best evidence that could be offered.

The certificate attached to the abstract shows that the officers of the Territory put this construction upon the law; for it states that it was filed in the office of the secretary *by the governor*, which was, of course, done in obedience to what the governor considered his duty under the law.

Third. That the abstract of votes cannot be properly received, because the contest was closed on January 6, 1860, by a notice from the contestant that he would take no further testimony, and the abstract was afterwards procured from the secretary.

There is, as the committee think, nothing in this objection; there is nothing in the facts of the case to give it plausibility even. On the 6th of January, 1860, the attorney of the contestant served upon the attorney for the sitting delegate a notice to the effect that the contestant would "proceed no further for the present with the *examination of witnesses*," &c.; and in the notice it was said, "whether any further testimony shall be taken in his behalf is a question reserved for further consideration;" * * * "should it be deemed necessary to exercise it, a new notice to that effect will of course be given."

The committee understand this as having reference manifestly only to the "*examination of witnesses*." The whole context of the notice shows this, and its object is stated to be that the sitting delegate may have an opportunity of proceeding to take his evidence. It says that if any further evidence is taken notice will be given. This, of course, refers to the taking of depositions; for no notice is necessary to obtain a certified copy of a record. Suppose the contestant had notified the sitting delegate that on a certain day he would apply at the office of the secretary and demand a certified copy of the abstract, what advantage could it be to him? The secretary, in making and certifying the copy, is not a witness, and could not be cross-examined. He performs the whole duty of making and certifying the copy without uttering a word; and the sitting delegate could not have interposed a valid objection to his doing so, for all citizens have a right to such copies of the public records. The argument that such a notice is necessary to obtain a record is frivolous.

But it is said that the sitting delegate is deprived of the opportunity of showing that this abstract is false. He does *not allege it to be false*. If he did, the committee would with pleasure have given him the opportunity to prove it so. But this paper was sent to the House by the judge in Nebraska, before whom the testimony was taken, sealed up with the other papers, and was along with them referred to this committee on the 16th of February, 1860.

The order to print was made on the 23d of February, 1860. The sitting delegate was bound to know, and might have known, (if he did not know,) with reasonable diligence, that this abstract was among the papers before the probate judge and your committee all the time. If he had desired to allege anything against its validity or truthfulness, it was his duty to have brought it to the notice of the committee and House, and have asked for permission to substantiate his accusation by proof. But he has done nothing of this kind, and only argues against the certificate that he should have had notice when it was obtained, since if he had had such notice he *might* have shown it to be false. The committee are unable to appreciate the force of this argument, but consider the paper, having reached the House and committee regularly, together with the other papers, as competent proof. They consider the seal of the secretary as giving his certificate the import of absolute verity, and decline to impeach it except in a direct mode. As the sitting delegate has made no such case as involves an inquiry into its validity, the committee have declined to prosecute a collateral one.

Fourth. That the evidence has not been taken before a proper officer, within the contemplation of the act of 1851.

The act of 1851 provides that depositions may be taken before justices of the peace, notaries public, or judges of courts of record. In this case they were taken before a judge of a court of probate in Nebraska, and it is insisted by the sitting delegate that a court of probate is not a court of record. The committee think differently. Such a court can do nothing without a record, and from the very nature of its duties, it must be a court of record. But if it were possible to doubt about such a position, the statute of Nebraska Territory has, in so many words, declared courts of probate to be courts of record.—(Laws of Nebraska, 1855, page 119.)

Other technical objections were made by the sitting delegate, which are so immaterial as to render any reference to them wholly unnecessary.

The committee consider the case of the contestant clearly and abundantly proven, and from the absence of any contrary proof on the part of the sitting delegate, are compelled to regard the contestant as entitled to the seat.

The frauds are palpable; so much so as to require that they shall be rebuked by the House as emphatically as possible. If such conduct should be tolerated, it would most seriously assail the integrity of the ballot-box.

The result to which they have come may be summed up, therefore, as follows:

Estabrook's whole vote	3,100
Daily's whole vote	2,800
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Estabrook's majority	300
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Illegal votes counted for Estabrook:

Buffalo county	292
Calhoun county	28
Izard county	21
L'Eau Qui Court county	68
Genoa precinct, Monroe county.....	20
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Total of illegal votes	429
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Illegal votes counted for Daily:

Calhoun county	4
Izard county	3
Genoa precinct	3
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Total of illegal votes	10
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There should be, therefore, deducted from the 3,100 votes counted for the sitting delegate, 429 illegal and fraudulent votes, which will reduce the whole vote cast for him to 2,671; and from the 2,800 votes counted for contestant, there should be deducted 10 illegal and fraudulent votes, which will make his whole vote 2,790, and this gives to the contestant a majority of 119 votes.

The committee, therefore, recommend the adoption of the following resolutions:

Resolved, That Experience Estabrook is not entitled to the seat as delegate from the Territory of Nebraska to the thirty-sixth Congress of the United States.

Resolved, That Samuel G. Daily is entitled to the seat as delegate from the Territory of Nebraska to the thirty-sixth Congress of the United States.

NOTES TO CONTESTED ELECTIONS OF DELEGATES

¹ Table of votes cast at the election, *History of Nebraska*, I, 190 note.

² The editor has given full accounts of the territorial elections in question in the first volume of the *History of Nebraska*.

³ *Ibid.*, p. 190.

⁴ *Congressional Globe*, 2d sess. 33d Cong., XXX, 198.

⁵ *History of Nebraska*, I, 190; *The Nebraska Advertiser*, July 30, 1857.

⁶ September 13, 1788, the congress of the confederation of states declared, on authority conferred by the convention which formed the constitution of the United States, that "the first Wednesday in March next" should be "the time for commencing proceedings under the said constitution." Accordingly, soon after the first Congress under the constitution assembled, a joint committee of the body determined that the terms of senators of the first class and of representatives commenced on that day—March 4, 1789—and that they must necessarily terminate with the third of March, 1791. According to practice, the third of March continues until noon of the fourth, and consequently each succeeding Congress has commenced at that day and hour. *House Manual*, 3d sess. 62d Cong., 1912-1913, p. 4 note. An act of Congress passed February 2, 1872, provided that in 1876 and every second year thereafter representatives and delegates should be elected on the Tuesday next after the first Monday in November to the Congress commencing on the fourth day of March thereafter. *U. S. Statutes at Large*, XVII, 28; *U. S. Compiled Statutes* 1901, I, sec. 25. This act of course made unnecessary state or territorial legislation on the subject. The act of March 3, 1875, gave such states as were obliged to change their constitutions in order to comply with the general federal law an opportunity to do so. *Ibid.*

⁷ *Congressional Globe*, 1st sess. 34th Cong., p. 3.

⁸ *Laws of Nebraska*, second session of the Legislative Assembly, p. 79.

⁹ An act of the fifth territorial assembly, passed October 25, 1858, changed the time for holding general elections to the second Tuesday in October; in 1859 this occurred on the eleventh of October.

¹⁰ The notorious Jack Morrow. His best known ranch or hostelry was situated not far south of the forks of the Platte

River. In *The Indian War of 1864*, page 96, Eugene Ware describes the place and its proprietor. Mr. John Bratt, who was a resident of North Platte, Nebraska, remembered that Morrow conducted a road ranch at the time in question which was situated in the neighborhood of Kearny City. He died in Omaha July 14, 1876, possessed of "a handsome property."

¹¹ There is an account, by the editor, of the controversy over this tract in the first volume of the history of Nebraska, pages 378-382.

¹² The statement that Gage, Clay, and Lancaster counties were wholly unorganized is inaccurate if not wholly untrue. Clay and Lancaster were included in the legislative apportionment of 1856 and Gage in that of 1857. Gage and Clay elected county officers and voted at the general election in 1857. Gage voted at general elections and elected county officers continuously from that time. Clay does not appear in the list of counties voting in 1858, though all of the three counties were included with Cass in a representative district, entitled to four members, in the election proclamation issued by Governor Izard, May 30, 1857. Governor Richardson, who succeeded Izard, did not assume authority to apportion membership of the General Assembly, and there is no mention of Clay, Lancaster, or Gage county by the journals of the fifth assembly—1857-58—or by the newspapers, as belonging to the Cass district or any other district; but in the House journal of that session four members, the same number allowed to the district comprising four counties in the preceding assembly, were accredited to Cass county. An act of the fifth assembly, passed November 3, 1858, constituted Johnson, Clay, and Gage counties a representative district, and Cass and Lancaster a representative district. The first delegate convention of the Democratic party in Nebraska, held August 18, 1859, seated a delegate from Lancaster county and two delegates representing Johnson, Gage and Clay. An act of the territorial assembly, approved January 11, 1861, provided that thereafter a term of court should be held annually in Clay county; an act of January 9, 1862, recognized the legal existence of the county by legalizing its assessment for taxes of 1861, and the apportionment act of February 1, 1864, included it with the counties of Lancaster, Seward, and Saunders in a joint representative district, though an act of February 15, 1864, ended its existence by incorporating a part of it in Lancaster county and the remainder in Gage county. The vote of Clay county was accepted without question in the election of 1860, for a delegate to Congress, and at the election for the same purpose in 1862. Pierce county was changed in form and name by the first General Assembly. It was called Ottoe, then the local

way of spelling the name of the tribe of Indians, who, with the Missouri, their amalgamated kinsmen, had immemorially owned the territory comprised in all of these first eight counties which lay south of the Platte river, until they ceded it to the United States on the 15th of March, 1854. The Platte River was the boundary of Cass county, as designated by Cuming.

The organization of Lancaster county was authorized by an act of the first territorial assembly, passed March 6, 1855, and again by the act of the second assembly, passed January 26, 1856, though not including the same territory. By the first act the Platte River was its northern boundary, and its southern boundary was a line extending west twenty-four miles from the southwest corner of Cass county, as it was formed by the act of the first assembly by which its southern boundary extended twenty-four miles westward from the Missouri River on its original southern line. Cass and Pierce were two of the original eight counties whose boundaries were established by Acting Governor Cuming by authority of the organic act of the territory. These outlines were uncertain and indefinite, due in part to carelessness and in part to inadequate knowledge of the country. The Weeping Water and a line running west from its headwaters to the western boundary of the territory ceded by the Oto Indians—about seventy-five miles beyond the Missouri River—were designated as the boundary between the two counties. The southern boundary of Pierce county followed Camp Creek from its mouth, about two miles and a half below the present boundary line between Otoe and Nemaha counties, to a point on the creek twenty miles south of the northern boundary of the county, and thence due west to the limit of the Oto and Missouri country. The Missouri River was the eastern, and the limit of the Oto country the western boundary of both counties. Green county, which also was bounded on the north by the Platte River and on the south by an extension due west of the southern boundary of Cass, formed the western boundary of Lancaster.

The act of January 26, 1856, extended Otoe and Cass about eight miles farther west and pushed Lancaster that much farther westward, so that its western boundary fell in line with that of Gage. The northern boundary was brought down from the Platte River to its present situation to make room for Calhoun county, whose vote was rejected in the Daily-Establishment contest. But this new county extended only to the fourth standard parallel on the north, leaving the fractional township 17, of ranges 5, 6, 7, 8, bordering on the Platte River, unincorporated until the act of November 3, 1858, annexed it to Calhoun county. The first territorial assembly

which the republicans controlled convened December 3, 1861, and for the name of the famous southern statesman it promptly substituted that of the new republican governor of the territory, Saunders. By the act of February 12, 1866, a strip two miles in width from the northern side of township 12, range 2, Cass county, was attached to Saunders. With this exception the county retains the form it took by the act of 1858. The city of Ashland is situated near the northeast corner of the appended strip. With the exception of this transfer to Saunders, Cass county retains the form given it by the act of January 26, 1856.

By the act of February 15, 1864, the northern half of Clay county—townships 7 and 8—was added to Lancaster, and the southern half to Gage. These two counties retain the form they then assumed.

In the office of the secretary of state there are full returns of the election in Clay county, held in 1859, for delegate to Congress and territorial officers. They are signed by H. J. Pierce, county clerk. There are returns also of the election held March 5, 1860, for the purpose of choosing a delegate to the constitutional convention who would represent Clay, Saline, Lancaster, Green, Calhoun, and Butler counties, and to vote for or against the proposition to hold a convention. George Noxon and John Cadman of Clay were the two candidates. The returns were signed by E. C. Austin, "Clerk of Clay Co., N. T.", and were dated at Austin, Clay county, regularly or irregularly the county seat. Cadman received 26 votes in the three precincts and Noxon seven votes. There are returns also of the votes for Daily, and Judge John F. Kinney, of Otoe county—candidates for the office of delegate to Congress in 1862—from Johnson, Clay, and Gage counties. The figures for the several counties are given separately but all on one sheet of paper and signed by James S. Daily, county clerk of Johnson county. Clay county gave five votes for Daily and twenty-five for Kinney.

Returns of the vote of Clay county for delegate to Congress in 1857 and for four members of the territorial assembly are signed by James R. Porter, deputy clerk of Cass county. Fenner Ferguson was the only candidate for delegate voted for.

James Cardwell, T. M. Marquett, Lawson Sheldon, and Samuel Maxwell received votes as candidates for membership of the fourth territorial House of Representatives. James A. Cardwell was a member of the third territorial House of Representatives, and William Wiles, of Plattsmouth, stated to the editor, on the 25th of June, 1864, that he then lived two miles and a half south of that town. According to the Andreas his-

tory of Nebraska (page 1036) James Cardwell settled in Lancaster county, near the subsequent site of Waverly, in November, 1857—subsequent to the election of that year. James Cardwell and James A. Cardwell were probably identical.

In a letter dated "Lancaster County N T March 7 1860", "L. J. Loder Clerk of Lancaster Co." informs "Mr. Morton Esq." that Lancaster county polled eleven votes for and ten against state government, and asks for the books to which the county is entitled. Returns of the vote of Clay county in 1861, for territorial auditor, were signed by J. H. Butler, John Barrett, and John O. Adams, "Board of Examination", and E. C. Austin, county clerk of Clay county.

In a letter dated "Austin, Mar. 9th 1860", addressed to J. S. Morton, then secretary of the territory, E. C. Austin, county clerk of Clay county, gives a list of the officers of the county, as follows: Judge [probate], H. W. Parker; clerk, E. C. Austin; sheriff, C. E. Austin; register, J. S. Goodwin; commissioners, J. H. Butler, James Goodwin, James Silvernail; justices of the peace, J. Grant, Ed. Austin, J. W. Prey, John Cadman; constables, J. Butler, W. Vancielief, James Prey; superintendent of schools, Charles Barrett; treasurer, J. B. Shaw. The letter instructed the secretary to, "Please ship by boat and direct to E. C. Austin, Brownville. Care of T. Hill."

So the metropolis of the extreme southeast part of the territory, about fifty-five miles distant, was the most convenient port of the experimental settlement whose site is now within Lancaster county.

In *Records Nebraska Ter.*, pages 247-253, are the names of officers elected, "as returned by the different county clerks of Nebraska Territory, for election of October 11th 1859, under their official seals." Washington, Platte, Dodge, Johnson, Monroe, Cass, Dakota, L'Eau Qui Court, Hall, Richardson, Dixon, Sarpy, Gage, Burt, Douglas, Cuming, Cedar, Nemaha, Pawnee, and Clay comprise the list. Lancaster is omitted. In the same record, page 286, Clay, Gage, and Lancaster are included in a copy of a certificate by J. Sterling Morton, secretary and acting governor, and Augustus Hall, chief justice of the territorial supreme court, of the territorial board of canvassers, of the vote on the proposition for state government.

In this record (page 300) the certificate of the territorial canvassers, of the election of 1860, for a delegate to Congress, includes the counties of Clay, Gage, and Lancaster. The certificate was signed by Samuel W. Black, governor; Augustus Hall, chief justice; and Robert A. Howard, district attorney. All of the three counties gave small republican majorities. The vote of Lancaster was 12 to 10. This county has been republican, and very much more so, ever since.

In the territorial record book called *Messages and Proclamations* (page 90) it appears that taxes for the general fund were levied upon Clay county for the years 1861, 1862, and 1863, and payments were made in 1862 and 1863. It appears also (page 96) that Gage county paid that kind of taxes in 1860, 1861, and 1862, and that a levy was made for 1863. In a military proclamation by Acting Governor Paddock, dated September 16, 1862, which is copied in this book, it is "ordered" that the several counties furnish their quota "to fill the ranks" of the "First Nebraska Regiment." The quota of Clay was 2; of Gage, 5; of Lancaster, 2. In a statement of sinking funds (page 114) received and disbursed from January 1, 1862, to December 31, 1862, Clay county is credited with \$25.80, and the county is recognized in the financial account for 1863 (page 115). In a statement of the general fund prior to 1862, Gage is included.

An act of the General Assembly, December 27, 1859, legalized the first organization of Gage county—in 1857, the location of the county seat at Beatrice, and the acts of the county officers. The act of March 16, 1855, "to define the boundaries and locate the Seat of Justice of Gage County", appointed William D. Gage, John B. Robertson, and Isaac L. Gibbs as commissioners to locate the county seat; but nothing appears to have been done toward organizing the county until a colony of settlers undertook the enterprise and designated Beatrice as the county seat without formal legal authority, in July, 1857. The act of July 26, 1856, reformed the original boundaries, which have not been changed except by the addition of two tiers of townships on the north, taken from Clay county by the act of 1864. Surveys were first begun in the southeast corner of the territory, and the lands comprised within Richardson county had been surveyed before the act of March 7, 1855, defining its boundaries, was passed, so they were described in terms of townships and ranges, while the descriptions of all the other counties, whose boundaries were defined by the first Legislative Assembly, were by metes and bounds. But inasmuch as Pawnee county extended twenty-four miles—equal to the width of four townships—westward from the western boundary of Richardson, and Gage county extended the same distance westward from the western boundary of Pawnee, by the terms of the acts of the same general assembly establishing their boundaries, the eastern and western boundary lines of these two counties coincided with the range lines of the subsequent surveys, and they remain as they were first fixed.

¹³ Alfred, father of Roscoe Conkling, the famous United

States senator. Alfred Conkling came to Omaha from New York with the purpose of practicing law, but he remained only a short time.

¹⁴ The boundaries of Izard county were first defined by the act of the first General Assembly, March 6, 1855. The northern boundary line was a short distance north of the present line between townships 30 and 31 north; the eastern boundary was approximately identical with the present boundary between ranges 4 and 5 east; the southern boundary line ran about two miles south of the sixth standard parallel; the western was nearly identical with the line between ranges 2 and 3 west. The county included all of that part of the present Cedar county lying south of a line running east and west a little north of Hartington, the county seat; all of the present area of Wayne county except its two eastern fractional townships; and four townships and a small fraction of another on the west of Dixon, from the southern boundary north; a strip about two miles wide of the northwest township of Cuming, of the northern tier of townships of Stanton, and of the two northeast townships of Madison; the east half of Pierce; and two of the eastern townships of Knox, running from south to north. By the act of January 26, 1856, the territory comprised in Izard county, except the strip south of the sixth standard parallel, was incorporated in the two new counties of Dixon and Pierce, and the name was transferred to new territory, contiguous to it on the south and now comprising all of Stanton county and Cuming's western tier of townships. The strip of the original Izard county south of the sixth standard parallel, except the western end now included in Madison county, was incorporated in the new Izard county. This was the county involved in the contest. It was named for Mark W. Izard, of Arkansas, who was the first marshal and the second governor of Nebraska territory, and afterward became a soldier in the Confederate army. The eighth Legislative Assembly was the first territorial legislature which the Republican party controlled, and by the act of January 10, 1862, that body changed the name of the county to Stanton, in honor of the secretary of war in Abraham Lincoln's administration. An act of the eleventh territorial assembly, approved February 12, 1866, transferred the tier of townships in range four to Cuming county. This depletion of Stanton county's territory was not formally recognized until the corrected boundary was incorporated in the compilation of 1873 called the General Statutes. The description of Cuming county in this compilation includes the southwest corner of the Omaha Indian reservation which is excepted in the description of 1866. The acts of March 28, 1873, describing the boundaries of Burt and Dakota counties, contigu-

ous to the reservation on the north and the south, respectively, do not include any part of it. These acts are also incorporated in the General Statutes. The description of Burt county in the laws of 1879 (p. 77) includes a strip of the reservation contiguous to the county nearly eight miles wide. By the act of March 28, 1889, the boundary of Burt county was changed so as to relinquish the part included in the reservation, except sections 21, 22, 27 and 28, of township 24, range 10, and the fractional sections lying between them and the Missouri River.

The southern boundary of the reservation runs five chains—one-sixteenth of a mile—south of the north boundary of the southern tier of sections of township 24. The remainder of that part of the reservation which had been included in Burt county was incorporated in Thurston county, which was established by an act of the same date. The boundaries established by these two acts remain unchanged. Wayne county, as first established in 1871, was bounded on the east by the reservation. An act of the legislature, March 1, 1881, undertook to add a strip of the reservation five miles wide and twelve miles long, north and south, to that county; but the supreme court of the state, at its September term, 1892 (*Nebraska Reports*, XXXV, 231), declared the act invalid. In its opinion the court erroneously says that this strip was four miles wide and fourteen miles long. This tract had been included in Thurston county when it was originally formed.

It was thirty miles, in a direct line, from Fremont to the nearest point of Izard county—the southeastern corner, which was then, and now is also the northwestern corner of Dodge county. That Izard county made only this one venture in the exercise of the rights and duties of civic organization is suggestive of a consciousness of its imperfection. There were no returns from the county in the census of 1860.

¹⁵ See the article *Neapolis, Near-Capital*, volume XVIII of the Society's publications.

¹⁶ Under the law governing elections it was the duty of the clerks of the counties comprising the several council and representative districts which contained more than one county to meet at the office of the clerk of the county first named in the act creating the district, which in this case was Platte county, and there canvass the votes cast in the several counties, whereupon the clerk of the county first named was required to issue a certificate of election to the candidate entitled to it. *Laws of Nebraska*, second session of the Legislative Assembly, p. 52. The amending act of February 13, 1857, required county clerks to transmit abstracts of votes cast for territorial officers and delegate to Congress to the governor, instead of the auditor as the law of 1856 ordered.

¹⁷ In the United States census of 1860 the population of Platte county is not given separately, but that of Platte and Madison is 782—nearly all of it in Platte county. Though the organization of Madison county was authorized by an act of the second legislative assembly, in 1856, it was not accomplished until 1868.

¹⁸ Sixty by the census of 1860.

¹⁹ For histories of this expedition consult House Journal of the sixth Legislative Assembly, page 259; Nebraska State Historical Society, *Proceedings and Collections*, v. 5, second series, p. 231; *History of Nebraska*, v. 2, p. 155.

²⁰ The Elkhorn entered Izard county at a point about eight miles south of the northern boundary and left it about a mile farther north, at the west boundary.

²¹ Thirty-two miles in a direct line. In 1860 Fontanelle had 175 inhabitants. The first settlement at Fontanelle was made in the fall of 1854 by a colony of about thirty persons from Quincy, Illinois. *Nebraska Palladium*, Dec. 20, 1854. The census enumeration probably included the total settlement at that time—June 1, 1860. Every census since that of 1860 has enumerated the inhabitants of Fontanelle precinct all together. There is a mere hamlet at the place. Fourteen votes were cast by the settlement at the first territorial election held December 12, 1854. These were all the votes cast in Dodge county. In his directions for the organization of the first eight counties preparatory to the first territorial election, Acting Governor Cuming designated "the house of Dr. M. H. Clark in Fontanelle precinct" as the only place for voting in Dodge county, and the first Legislative Assembly named Fontanelle "the place of justice in and for said county." An act of the Legislative Assembly, January 12, 1860, attached that part of Dodge county lying east of the Elkhorn River, including Fontanelle, to Washington county. An act of January 13 ordered an election to be held in Dodge county on the first Monday of February at which the voters should choose a location for the county seat and accordingly Fremont was chosen. Unfortunately the name Fontanelle was misspelled—with an a instead of an e in the second syllable—in the governor's proclamation and the act of the assembly adverted to, though it was correctly spelled in other acts of the same assembly and also in acts of the second assembly; and the error has been perpetuated by usage.

²² According to the United States census of 1860, Dewitt, where a settlement was started in March, 1857, had fourteen inhabitants June 1, 1860, and by the census of 1870 it was reported as having no population. It was situated in the

southwest quarter of section 4, township 22, range 6 east, about a mile and a half east of the Elkhorn River and about five miles west of north from West Point. These two places became rivals for the location of the county seat when the county was organized in 1858, and the choice of West Point by a popular vote emasculated Dewitt. A sectional map published in 1885 appropriately designated the site "Cemetery."

²³ A village in Otoe county, about five miles from Nebraska City, where Judge Kinney resided.

²⁴ Eight counties with very few if any inhabitants were "established" by the first Legislative Assembly and eight or nine by the second assembly.

²⁵ Shinn's ferry, an important crossing of the Platte River, was about fifteen miles below the confluence of the Loup and eighteen miles east of Columbus. For a description of the ferry see Nebraska State Historical Society, *Proceedings and Collections*, II, second series, p. 55. Powhoco is a corruption of Pahuk, which means headland. It is the Pawnee name of their sacred hill, situated on the south side of the Platte River about two miles north of the town of Cedar Bluff, which is the name given to the hill by white people. The Chicago & Northwestern railroad, from Lincoln to Fremont, runs along the western base of the bluff as it approaches the Platte.

²⁶ There is no note or record of a vote of Calhoun county after that of 1859; but in the apportionment of November 3, 1858, the county was assigned to a representative district with Platte, Green, and Butler, though only the three counties last named were mentioned in the House Journal of the sixth Legislative Assembly which convened December 5, 1859; it was not included in the apportionment of delegates to the proposed constitutional convention of 1860. It was allowed two votes in the Republican territorial convention, held August 1, 1860, but was not recognized in the credentials of the Democratic convention of that year. It was included with the other three counties in the assignment of members in the House Journal of the seventh Legislative Assembly which convened December 3, 1860. According to the United States census the population of Calhoun county, June 1, 1860, was 41. No towns, villages or other subdivisions were designated in the enumeration.

²⁷ The name of this county was changed to Knox by act of the state legislature, February 21, 1873. For an account of changes of its boundaries see *Nebraska Constitutional Conventions*, III, p. 486. According to the United States census of 1860 the population of the county was only 152.

²⁸ Mr. James was secretary of state when Governor David

Butler was removed from office by impeachment in 1871, and by a provision of the constitution he then became acting governor. In the anarchical proceedings which followed Butler's removal Acting Governor James opposed the Butler, or Lincoln, faction and prorogued the legislature to circumvent its attempt to gain control. He left the state and became a resident of Colfax, Washington, in 1877.

²⁹ So-called because he was chosen for probate judge at the first election in L'Eau Qui Court county, in 1857. At the election of 1859 he was chosen a representative in the sixth Legislative Assembly, which convened December 5, 1859. R. M. Hagaman was elected county clerk and T. G. Hullihen (erroneously called Callahan, page 229) sheriff at the same time.

³⁰ Howell Cobb, of Georgia, was a very prominent politician and secretary of the treasury during James Buchanan's administration. Aaron Venable Brown, of Tennessee, was also a very prominent politician and was postmaster-general under Buchanan's administration. Both men were extreme partisans of the slavery cause.

³¹ Frankfort was recognized in only one United States census, that of 1870, when it was credited with a population of 63. Its post-office was discontinued in 1881. Zepeota is not named in any census. There is now no post-office called by either of these names. According to Colton's map of Nebraska, 1869, Frankfort was situated near the Missouri River, four miles and a half west of the eastern boundary of the county. A road named "St. James to Frankfort" runs diagonally through the plat of township 33, range 2 west of the sixth principal meridian, and terminates in the southwest corner of section 8, near the Missouri River. This terminal corresponds approximately with the map's placing of Frankfort. Another road marked "St. James to Topaota" nearly parallels the Frankfort road at a short distance from it and terminates at "Topaota House", in the northwest quarter of section 18, near the river and about one mile west of Frankfort. Topaota is doubtless the Zepeota spoken of by the witnesses. The survey was made September 4 to 8, 1858. By the survey of October 21 to 23, 1858, Croy's Grove extended northeast and southwest across the middle of section 1, township 32, range 2 west. It was not a town site, but apparently a grove about one mile in width. "Town of Nebrarah" is printed across the middle of the south half of section 10, township 32, range 6 west, from a quarter to half a mile distant from the Missouri River. The mouth of the Niobrara River is placed about a mile and a half from the northwest corner of the site. Surveyed March 15 to 20, 1859.

⁸² A settlement was started at Breckenridge, where the Santee agency is now situated, in 1857, but not long after the inhabitants were attracted to Niobrara by its superior promise, and Breckenridge became a deserted village.

⁸³ Mr. Taffe was a member of the House of Representatives of the fifth Legislative Assembly, which convened on the 5th of December, 1859, of the Council of the sixth assembly, of the 40th, 41st, and 42d Congresses; and in 1873, following his career in Congress, he was editor of the *Omaha Republican*.

⁸⁴ The population at this place was not numerous enough to receive recognition by the census enumerator of 1860, and it does not appear on the maps of that time.

⁸⁵ For additional information about Kearny City see Nebraska State Historical Society, *Collections*, XVII, 228.

⁸⁶ In Colton's map of Nebraska, published in 1869, Nebraska Center is erroneously placed near the northwest corner of section 5, township 9, range 14 west—about five miles northwest of the site now occupied by Gibbon. Through settlers of the early sixties in Buffalo county, Mr. Samuel C. Bassett has been able—in January, 1916—to identify four of the men whose names appear on the tally sheets of the election of 1859 at Nebraska Center and Wood River Center, namely, Charles Wilson, Henry Wilson, John W. Britt, and Henry Peck. According to this testimony all of them lived either in Nebraska Center precinct or in Centralia precinct. Peck alone voted at Wood River Center, the polling place of Centralia precinct. Joseph Owen, who has been a resident of Buffalo county ever since 1863, now says: "I have always known that the J. E. Boyd place, when I came here in 1863, was known as Nebraska Center." Boyd established a road ranch, general trading post and stock farm there in December, 1858. It was situated on the southwest quarter of section 14, township 9, range 14 west, about two miles directly west from the site now occupied by Gibbon.

The accommodating and enterprising spirit in which election laws were administered is illustrated in the fact that David Anderson appears as a voter on the tally sheet of the election at Nebraska Center in 1859. In his account of the early settlements of the Platte valley, published in volume XVI, *Collections*, Nebraska State Historical Society, he says, at page 195: "On arrival at the old Boyd ranch, eleven miles east of the fort, our team was so fatigued that we were compelled to rest for three days." Though he notes that an election was held while he tarried, he says nothing about voting himself. According to the recollection of the early settlers adverted to, only three of the voters at Nebraska Center in

1859 were residents in that vicinity. If the testimony of these witnesses is correct, then the other thirty-five names which appear on the tally sheet were either borrowed or purely fictitious. It would be interesting to know whether Mr. Anderson's name was used without his consent or whether he actually voted; but he has passed beyond reach of human communication.

For an account of the process of organizing Buffalo county see Nebraska State Historical Society, *Collections*, XVII, p. 152, note 4.

³⁷ Joseph E. Johnson settled at this place, known as Wood River Center, and now within the site of Shelton, in 1859. He was of the Mormon sect and in 1848 established himself at the Mormon settlement called Kane, now Council Bluffs, Iowa. There he published the *Council Bluffs Bugle*, and in 1854 started the *Omaha Arrow*, the first newspaper published at Omaha. At Wood River Center he conducted a road ranch and began the publication of a weekly newspaper called *The Huntsman's Echo*. On the fifth of July, 1861, he abandoned his varied activities at Wood River Center and moved on to join his sectarians in Utah where he finished a very unique career.

³⁸ Probably Major John Talbot, who became the first probate judge of Kearney county on its organization in 1860. See Nebraska State Historical Society, *Collections*, XVII, 228 note.

³⁹ Gillis was the first agent of the Pawnee tribe separately, and though he was in charge of them as a special agent in the fall of 1859, the separate agency was first authorized by an act of Congress June 25, 1860. *Messages and Documents* 1859-60, pt. I, 380; *U. S. Statutes at Large*, XII, 113. Until that time they had been in an agency with the Oto and Missouri. The Omaha were also included in this agency until 1855. The act also provided an agent for the Ponca tribe alone.

⁴⁰ About one mile from the eastern boundary and five miles from the northern.

⁴¹ See footnote 12.

⁴² Mr. Neligh, one of the principal founders of West Point, had a very active and prominent career both in business and politics. The town of Neligh, Antelope county, was named for John D. Neligh who led in establishing it.

⁴³ The usual spelling was Omadi. The village was situated on Omaha Creek, in Dakota county, upwards of one mile north of the northern boundary of the Winnebago Indian reservation. Its population in 1860 was 46, according to the United States census, but it did not appear in the enumeration of 1870. It has disappeared from the maps and there is no post-office of .

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that name. Omadi was started by residents of Omaha in 1856, and it was incorporated as a town by an act of the legislative assembly, December 31, 1857.

⁴⁴ Mr. Boyd subsequently became a very prominent citizen of Omaha and governor of Nebraska.

⁴⁵ John F. Kinney, of Nebraska City, Origen D. Richardson, John I. Redick, Alfred Conkling, Samuel Pease, Algernon S. Paddock, all of Omaha.

⁴⁶ The settlement called Bonhomme Island was situated opposite the island which is southeast of the town of that name in South Dakota. It has not a post office or a place on the maps. The town of Bon Homme City was incorporated by an act of the Legislative Assembly, November 4, 1858, and the same act authorized Bon Homme City Town Company to operate a ferry across the Missouri River anywhere between a point a mile and a half below and opposite the head of Bon Homme island and a point a like distance above and opposite it.

⁴⁷ Mr. Estabrook overlooked the fact that the strip between the fourth standard parallel, which was the original northern boundary of Calhoun county, and the Platte River had been attached to the county by act of the Legislative Assembly of 1858. According to Colton's map of 1869, Saline was situated on Salt Creek, about four miles southwest of Ashland. The map site of Excelsior was on the Platte River, nearly east of the subsequent site of Mead. Neither Excelsior nor Saline now has a place on the maps. If this Valparaiso was situated on the Nebraska City and Fort Kearny road, it must have been about three miles farther north than the present town of that name. The survey of October 1, 1857, shows "Town Site of Valparaiso" on the east half of section 22, township 13, range 5 east.

⁴⁸ The Pawnee were not "punished" in this encounter—of July 13, 1859—beyond being scared by the military demonstration. There was no firing of guns or other physical conflict. The most practical result of the expedition was a promise by the Indians to be good thereafter, which was kept in the Indian way; that is, they were a little better. In four months from this event they were removed to their final reservation in Nebraska where it was practicable to keep them under strict control. Near the end of June there was a collision between a band of Pawnee marauders, not far from West Point, and a volunteer band of citizens of Fontanelle, in which at least four Indians were killed.

⁴⁹ Votes polled in L'Eau Qui Court in 1858.

⁵⁰ The boundaries of the reservation were surveyed in Sep-

tember and October, 1859. The agency buildings were placed on the northwest quarter of section 13, township 17, range 4 west, the site of the present town of Genoa.

⁵¹ *Laws of Nebraska*, first session of the Legislative Assembly, p. 222. It is at least doubtful whether section 8 of this act contemplated that under it residents of unorganized territory might vote at all elections, in the manner designated, or that they might so vote only in the process of organizing the county by the choice of county officers after the Legislative Assembly had established the county boundaries. Mr. Estabrook, in his foregoing argument (p. 282), interprets the authorization as general; but those who controlled the elections of Buffalo county and Kearney City evidently took the opposite attitude, otherwise they might have conducted the election at Kearney City in accordance with the law, or at least within the color of the law.

The peculiar spelling of words in the parts of this paper which are taken from the official record is according to the rule of following copy strictly in such cases. The fact that the name of the most conspicuous soldier in the history of "the Nebraska country" is spelled without an e in the final syllable throughout Estabrook's argument is of more than passing interest. This correct spelling was common as late as the early seventies when the rape was accomplished. It is practicable to repair the mischief and atone for the outrage by dropping the e from the second syllable of the name of the county and the city into which it was wrongfully obtruded.

PROCEEDINGS OF THE SOCIETY, 1917

THIRTY-NINTH ANNUAL MEETING OF THE NEBRASKA STATE HISTORICAL SOCIETY

The thirty-ninth annual meeting of the Nebraska State Historical Society was called to order at the Temple Theatre, Lincoln, January 11, 1917, at two o'clock in the afternoon, John L. Webster, president, presiding. Reports of the secretary, the treasurer, and of Wiggins-Babcock Company, auditors of the Society's accounts, were received and approved.

The secretary made a brief report of the routine of the Society for the year 1916.

The treasurer's report showed a balance on hand January 1, 1917, \$42.75; receipts during the year, \$1,192.15; total \$1,234.90; expenditures for the year, \$831.83; balance on hand December 31, 1916, \$403.07.

FINANCIAL STATEMENT

Wiggins-Babcock Company's statement of the Society's financial transactions for the year follows:

Current Receipts and Expenses, 1916

Balance from Dec. 31, 1916:

P. L. Hall, treasurer	\$11.22
Crounse fund	5.53
Building fund	26.00
Cash in hands of secretary.....	27.00
Secretary's contingent fund	100.00

Total cash	\$169.75
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Appropriation balances:

Incidentals	\$2,949.97
Regular salaries	8,150.02
Traveling expenses	234.30
Extra office help	187.50
Paving tax	211.21
Printing proceedings, etc.....	2,000.00
Janitress	320.00

Total appropriation balances.....	14,053.00
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Total cash and appropriations	\$14,222.75
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Receipts

Membership fees	\$747.50 ¹	
Sales of books	23.15	
Sale of badges	4.25	
Miscellaneous receipts	392.25	
	<hr/>	
Total receipts		1,167.15
		<hr/>
Total to be accounted for	\$15,389.90	

Expenses, 1916

Salaries	\$6,926.52	
Postage	173.00	
Express	6.05	
Freight and drayage	52.36	
Telephone and telegraph	78.82	
Traveling expenses	130.49	
Extra labor	154.10	
Books purchased	202.11	
Printing	58.50	
Binding books	4.50	
Advertising	5.25	
Photography	44.45	
Stationery and office supplies	248.57	
Annual and board meetings	70.00	
Furniture and fixtures	177.67	
Miscellaneous expenses	166.96	
Paving taxes	179.87	
Maintenance of grounds and buildings....	65.10	
Badges	119.00	
	<hr/>	
Total expenses		8,863.32
		<hr/>
Balance		\$6,526.58
Consisting of:		
Cash in hands of secretary...	\$4.00	
Secretary's contingent fund..	100.00	
Cash in hands of treasurer..	403.07	
	<hr/>	
Total cash	\$507.07	

¹I have classified these fees as follows: Initial membership, 30 at \$2, \$60; annual membership 291 at \$2, one 50c, \$582.50; life membership, Hector Maiben \$50, James Hazen Hyde \$50, George W. Hansen, balance, \$5.—Ed.

Appropriation balances:

Incidentals	\$1,820.53
Regular salaries	1,896.73
Traveling expenses	105.41
Extra office help	85.50
Paying tax	31.34
Printing proceedings	2,000.00
Janitor's salary	80.00

Total appropriations available..... 6,019.51

Total cash and appropriations\$6,526.58

We have examined all vouchers for funds disbursed and found them correct in form and detail and charged to the appropriate accounts.

We have made a detailed audit of the annual report of the treasurer of the Society, Dr. P. L. Hall, and find the same correct; have also checked the appropriation balances with the records of the auditor of public accounts.

Respectfully submitted,

WIGGINS-BABCOCK COMPANY,
Public Accountants.
By B. H. WIGGINS.

OBITUARY REPORT

Dr. Hamilton B. Lowry, for the obituary committee, reported deaths of members during the year 1916 as follows:

Arthur D. Brandeis, New York, N. Y., October 4, 1916.
Daniel F. Davis, Silver Creek, Nebr., September 26, 1915.
Oscar E. Gaeckler, Lincoln, Nebr., January 14, 1916.
Edwin N. Grenell, Fort Calhoun, Nebr., April 1, 1916.
Charles M. Hall, Lincoln, Nebr., December 20, 1915.
Frank J. Kelly, Lincoln, Nebr., March 27, 1916.
Benjamin E. B. Kennedy, Omaha, Nebr., August 21, 1916.
Clarence S. Paine, Lincoln, Nebr., June 14, 1916.
Cary S. Polk, Boise City, Idaho, March 11, 1916.
Edward H. Marshall, Lincoln, Nebr., February 7, 1916.
William A. Wagner, Oak Grove, Oregon, August 3, 1916.
John C. Watson, Nebraska City, Nebr., February 2, 1916.
Edmund P. Weatherby, Norfolk, Nebr., September 4, 1915.

ELECTION OF OFFICERS

For the office of president of the Society for the ensuing year Mr. Novia Z. Snell nominated Samuel C. Bassett and Mr.

Horace S. Wiggins nominated Mr. Webster, the incumbent; whereupon Mr. Webster said: "I feel that under the circumstances I cannot permit my name to be used in the selection. I think I must decline the nomination."

Thereupon a motion that the secretary cast the ballot of the Society for Mr. Bassett was carried unanimously.

For members of the board of directors Messrs. William E. Hardy and Novia Z. Snell were opposed by Messrs. William A. Lindly and Horace S. Wiggins. Mr. Hardy received 57 votes, Mr. Snell 47, Mr. Lindly 20, and Mr. Wiggins 24; whereupon Mr. Hardy and Mr. Snell were declared elected.

Don L. Love for vice president; Robert Harvey, second vice president; Addison E. Sheldon, secretary; Dr. Philip L. Hall, treasurer, were elected unanimously.

A resolution of thanks for Mr. Webster's services as president of the Society, and a resolution that he continue to preside over the further ceremonies of the semicentennial celebration, at Lincoln, were unanimously adopted. Thereupon the business session adjourned.

The final session of the annual meeting was held in the evening at St. Paul's church, at which Governor Neville gave an address of welcome, Mr. John L. Webster responding. General Nelson A. Miles then delivered the principal address of this session. His remarks were mainly about the pending war.

DIRECTORS' MEETINGS

At a special meeting of the board of directors held January 17, 1917, Attorney-General Reed was asked whether, in his opinion, the Society should deposit moneys received as membership fees and from miscellaneous sources in the state treasurer's office. The attorney general replied in the negative. Regular quarterly meetings of the directors for the year 1917 were held on January 11, April 25, July 10, and October 10.

At the April meeting seventeen persons were elected sustaining members of the Society, and James Hazen Hyde of Paris, France, was chosen a life member. The names and addresses of the sustaining members follow: Ralph D. Currier, University Place; Charles E. Chowins, F. E. Schaff, Harry R. Follmer, Robert W. Devoe, Lincoln; Charles Dawson, F. W.

Judson, Omaha; F. W. Johnson, Fullerton; Iretus W. Jacoby, Havelock; T. J. Nolan, Snyder; Frank A. Peterson, College View; Edwin E. Squires, Broken Bow; Luke Roberts, Douglas; A. R. Honnold, Scottsbluff; Burnell Colson, Fremont; H. M. Davis, Ord—all residents of Nebraska; and O. G. Boisseau, Holden, Mo.

The publication of a monthly paper by the Society, the cost not to exceed fifty dollars for each issue, was authorized.

At the July meeting eighteen new members were elected, all sustaining and all residents of Nebraska, as follows: R. H. Pember, Trenton; C. G. Barns, Albion; John M. McAllister, W. L. McAllister, Neligh; Lee W. Edwards, Omaha; Walter F. Crinklaw, Wahoo; Rachel Stander, Louisville; Alfred L. Swanson, Ong; Lucian C. Johnston, Seward; James V. Wood, University Place; Mrs. R. C. Maiben, Benjamin Maiben, Palmyra; George L. Berger, Elmwood; Gus G. Becher, Columbus; Mrs. J. F. Vanscoyoc, Maria Canfield McCrillis, George L. Towne, and Malcolm G. Wyer, Lincoln.

At the October meeting the superintendent was authorized to donate sets of the Society's publications to the libraries of the several military camps where Nebraska soldiers are located in considerable numbers.

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